(37,476)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 779

CENTRAL KENTUCKY NATURAL GAS COMPANY, APPELLANT,

vs.

RAILROAD COMMISSION OF KENTUCKY, MOSES R. GLENN, OSCAR VEST, AND JAMES HATCHER, MEMBERS CONSTITUTING SAID RAILROAD COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY

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IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (AT LEXINGTON)

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY, MOSES R. GLENN, Oscar Vest, and T. H. Lauhon, Members Constituting said Railroad Commission; J. W. Cammack, Attorney General of the Commonwealth of Kentucky; City of Lexington, a Municipal Corporation, and S. B. Featherstone, Individually and as Representing All Other Persons Similarly Situated

BILL OF COMPLAINT—Filed Oct. 19, 1929

To the Honorable A. M. J. Cochran, Judge of the District Court of the United States for the Eastern District of Kentucky:

The Central Kentucky Natural Gas Company, the plaintiff, a Corporation, brings this its Bill of Complaint against the Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon members of and constituting the said railroad commission, J. W. Cammack, Attorney General of the Commonwealth of Kentucky, the City of Lexington, a municipal corporation, and S. B. Featherstone, who is made defendant on his own behalf and on behalf of all other consumers of natural gas similarly situated; and for its cause of action the plaintiff complains and alleges as hereinafter set out.

I

The plaintiff, Central Kentucky Natural Gas Company, is a corporation created and existing under the laws of the Commonwealth of Kentucky, with its principal office in the City of Lexington, Kentucky, in the Eastern District of this State, to which said district all of its operations are confined and in which all of its property is located.

The defendant, Railroad Commission, is a body created and existing under the Constitution and Statutes of the Commonwealth of Kentucky and maintains its office at the seat of Government in the City of Frankfort, which is in the Eastern District of the Commonwealth of Kentucky. The defendants, Moses R. Glenn, Oscar Vest and T. H. [fol. 2] Lauhon constitute said Railroad Commission and are the duly elected, qualified and acting members thereof. Each of said three members is a citizen of the State of Kentucky. The said Moses R. Glenn is a resident of Dawson Springs, Christian County, in the Western District of said State; Oscar Vest is a resident of Carrollton, Carroll County, in the Eastern District of said State; T. H. Lauhon is a resident of Ashland, Boyd County, in the Eastern District of said State. The defendant, J. W. Cammack is a citizen and resident of the State of Kentucky and is the duly elected, qualified and acting Attorney General, and is a resident of Frankfort, Kentucky, in the Eastern District of said State. The City of Lexington is a municipal corporation, created under the laws of the State of Kentucky, and is a city of the second class, and is situated in the Eastern District of Kentucky. The defendant, S. B. Featherstone is a citizen and resident of the State of Kentucky, and is a resident of the City of Lexington, Fayette County, in the Eastern District of said State.

II

This action is of a civil nature in equity and is brought for the purpose of enjoining the enforcement of an Order of said Railroad Commission, dated October 9, 1929, prescribing the rates to be charged by plaintiff for natural gas service furnished the inhabitants of Lexington, Kentucky. It arises under the Constitution and the laws of the United States, particularly under the Fourteenth Amendment to said Constitution, in that the rate prescribed is unjust, discriminatory and confiscatory of plaintiff's property.

The amount in controversy is in excess of $3,000.00, exclusive of interest and costs.

[fol. 3] III

This suit involves the right of the plaintiff to have established and fixed for rate making purposes the fair and rea-

sonable value of its property, devoted to public use, and the determination of a fair and reasonable return upon said value. Plaintiff avers that the said order does not properly and legally give consideration to the present value of its property in accordance with the competent evidence of such value presented to the defendant, Railroad Commission, and is confiscatory of its property used and useful in furnishing gas service to the public; that said order deprives plaintiff of its property without due process of law and denies plaintiff the equal protection of the laws, in violation of its rights under the Fourteenth Amendment to the Constitution of the United States, and is therefore null and void. Said order is in violation of the rights of the plaintiff under Section 13 of the Constitution of the Commonwealth of Kentucky, in that same would result in the taking of plaintiff's property without just compensation therefor.

IV

Plaintiff says that on or about September 5, 1905, it purchased a natural gas franchise from the City of Lexington, Kentucky, said franchise having been offered for sale and purchased by the plaintiff in due conformity with the laws of the Commonwealth of Kentucky. The plaintiff, under the terms of said franchise, furnished and sold natural gas to consumers thereof in the City of Lexington until the expiration of said franchise, which occurred on or about the 5th day of September, 1925. Plaintiff says that prior to the expiration of said franchise it entered into negotiations with said City for a new franchise, and said negotiations continued up to January 28, 1927, on which date the Com- [fol. 4] missioners for the City of Lexington duly passed and adopted an ordinance, hereinafter sometimes referred to as the "Franchise Ordinance", under which the sale of a franchise was authorized and directed to be made; that thereafter said franchise was offered for sale at public auction, and the bid of plaintiff therefor was accepted subject to its further approval and acceptance by the Commissioners for the City of Lexington, that thereafter said Commissioners for the City of Lexington duly adopted an ordinance accepting the bid of the plaintiff for said franchise; that said ordinance was published and became a law on the 25th day of February, 1927, and by virtue of said ordinance

a contract was effected and completed between the plaintiff and the City of Lexington, under which the plaintiff acquired a new franchise under said franchise ordinance, and the effective date of said franchise contract was and is February 25th, 1927.

Plaintiff says that under the terms of said franchise contract all matters pertaining to the rights and obligations of the plaintiff in furnishing and selling natural gas thereunder to the consumers thereof in the City of Lexington were agreed to, except that the rates, charges and compensation to be charged by the plaintiff for its natural gas service were not specifically agreed upon in said franchise contract, but said ordinance provided in Section 4 (A) thereof that the plaintiff Company should have the right to charge, demand, collect and receive for its gas service just and reasonable rates, charges and compensation. Plaintiff says that under sub-section (B) of said Section 4 it was provided that plaintiff should within two days after the effective date of said franchise contract promulgate in writing the rates, charges and compensation which it should deem to be just and reasonable, and which it proposed to charge for its gas service, and to file a copy [fol. 5] thereof with the Mayor of the City of Lexington, and a copy thereof, together with a copy of said franchise ordinance, with the Railroad Commission for the State of Kentucky. Plaintiff says that pursuant to the provisions of said Section it did within two days after the effective date of said franchise contract, to-wit, on February 26, 1927, promulgate in writing the rates, charges and compensation which it then deemed to be just and reasonable and which it proposed to charge for its gas service, and filed a copy thereof with the Mayor of the City of Lexington, and a copy with the Railroad Commission for the State of Kentucky. Plaintiff says that sub-section (D) of said Section 4 of said franchise ordinance provided, that in the event the rates and charges promulgated as aforesaid by the Company, plaintiff, should, in the opinion of the said City of Lexington, be in excess of just and reasonable rates and charges, then said City should proceed before the railroad commission for the State of Kentucky, as provided in Sections 201e-1 to 201e-20, of the Kentucky Statutes. Plaintiff says that the City of Lexington did proceed before the said railroad commission by filing with said com-

mission its complaint to said rates and charges, and averred therein that said rates and charges were excessive and extortionate; that said complaint was filed on behalf of the City of Lexington, and by S. B. Featherstone for themselves and all other consumers of natural gas in the City of Lexington as complainants against Central Kentucky Natural Gas Company as defendant. Plaintiff says that said complaint was duly heard by said railroad commission under and by proper pleadings, and testimony and evidence was introduced and offered by both the complainants and this Company, and said case was submitted on the pleadings, proof and exhibits introduced by the parties thereto, on or about the — day of July, 1929, and written briefs were thereafter filed by the respective parties, and [fol. 6] plaintiff states that thereafter it received by mail from the defendant, Oscar Vest, a copy of a letter bearing date October 1, 1929, addressed and sent by said defendant Oscar Vest to the Hon. Robert H. Winn, of Counsel for the City of Lexington, in said proceeding, stating that said Commission had fixed a rate of 45 cents for natural gas at Lexington as a flat rate, and requesting therein that the attorneys for the City of Lexington prepare an order in accordance therewith. Plaintiff says that thereafter, to-wit, on the 9th of October, 1929, and prior to the making of an entry of any order by said Commission fixing the rate aforesaid and herein complained of, the plaintiff filed before said Commission its certain motions in writing, wherein the plaintiff requested said Commission to ascertain, find and set out in its order, and preliminary and prior to the fixing of any rate or charge for its gas service at Lexington, and showing and establishing the necessary basis for the fixing of any such rate or charge, certain facts including among others the value of the plaintiff's properties, both in the aggregate and separately, as to the various units thereof, used and useful in rendering said gas service to the consumers thereof in the City of Lexington, which said motions were and are in full as follows, to-wit:

BEFORE THE RAILROAD COMMISSION OF THE STATE OF KENTUCKY

CITY OF LEXINGTON and S. B. FEATHERSTONE, Complainants,

vs.

CENTRAL KENTUCKY NATURAL GAS COMPANY, Defendant

Motions Made on Behalf of the Defendant

Now comes the defendant, Central Kentucky Natural Gas Company, and states that it received in due course of [fol. 7] mail a copy of the letter of Commissioner Oscar Vest addressed to Hon. Robert H. Winn under date of October 1, 1929, and reading as follows, to-wit:

"Kentucky Railroad Commission, Frankfort

October 1, 1929.

Hon. Robert H. Winn, Mt. Sterling, Kentucky.

DEAR SIR: Upon consideration of the proof and the brief, the Commission has fixed a rate of forty-five cents for natural gas at Lexington. This is to be a flat rate.

The Attorneys for the City of Lexington will prepare an order accordingly.

We desire the order to reserve the question of the money impounded in John Carter's hands as receiver until we have considered it, and have asked the views of the attorneys about it, if we decide to have a hearing on the subject.

Very truly yours, Oscar Vest."

This defendant now moves the Commission as hereinafter specifically set out.

1. This defendant moves the Commission to rule on all motions hereinbefore made before the Commission and not heretofore disposed of, and more specifically, to rule on the objections and exceptions to the testimony of John T. Kimball and Harrison Smith filed herein by the Complainants on or about September 11, 1929, and to enter an order herein stating the rulings of the Commission thereon.

2. This defendant states that any rate or charge, which may be fixed or ordered by the Commission as a just and reasonable charge which this defendant may be permitted or ordered to make and collect for its gas service, must [fol. 8] necessarily be based on the value of the defendant's property used and useful in rendering said service as ascertained and fixed by this Commission, and on which the Commission shall hold that this defendant is entitled to a reasonable return; also on the rate of return as ascertained and found by the Commission to be a reasonable and sufficient rate of return; also on the percent of property values or amounts ascertained and allowed by the Commission as reasonable and sufficient for purposes of amortization, depletion, maintenance, and for contingencies; also on the amount as ascertained and estimated by the Commission, which should be allowed as reasonable for operating expenses; also on the amount as ascertained and estimated by the Commission which shall be produced as gross revenue to the defendant under such rate as the Commission may fix and order, and which shall be available for operating expenses, for amortization, for depletion, for maintenance, for contingencies, and for a return to this defendant on the ascertained value of its entire property, and on the ascertained value of its property allocable to the Lexington District.

This defendant says that it is entitled to have the Commission ascertain and determine each and all of said matters by an order entered herein prior to, or as preliminary to and part of an order entered by the Commission fixing and ordering the rate or charge which this defendant shall be permitted to collect for its gas service; and to the end that these things shall be done and made a matter of record herein, this defendant now moves the Commission specifically as hereinafter set out in the severally numbered paragraphs hereto following:

3. This defendant moves the Commission to specifically find and state by its order as to whether it holds that the value of the property owned by the Lexington Utilities Company, known as the Lexington Distribution System, [fol. 9] and used in the service rendered by the defendant, should be included with the value of this defendant's property as part of the total value of the property on which a reasonable return should be predicated, disregarding and

omitting the rental paid by the defendant to the Lexington Utilities Company as an operating expense for the use of said property; or whether the value of said property of the Lexington Utilities Company should be excluded from the rate base, and said rental treated as an operating expense.

4. If the Commission shall hold and order that the value of said property of the Lexington Utilities Company should be included in and as a part of the rate base, then this defendant further moves the Commission to specifically find and state separately by its order the value which the Commission places on said property and the value at which it should be included as a part of the rate base.

5. This defendant further moves the Commission to specifically find and state by its order entered herein the total value which the Commission places on the property of the defendants used and useful in rendering its gas service, and on which the Commission shall hold that the defendant is entitled to earn a return; and this defendant further moves the Commission to find and state separately by its order entered herein, the value which the Commission places on the separate units or integral portions of the defendant's property as shown by the inventories and valuations of said property testified to by the witnesses herein, and as follows, to-wit:

(a) That the Commission state separately the value which it places on the Production System properties owned by the defendant and consisting of the Menifee Field property and the Red Bush Field property; and this defendant further moves the Commission to specifically state the value which the Commission places on or assigns to the [fol. 10] Menifee Leaseholds, including the gas contained therein, and also what value, if any, the Commission assigns to said Menifee leaseholds as a reservoir, or container, for storage purposes over and above the value assigned to said Menifee leaseholds as a production property.

(b) That the Commission state separately the value which it places on the several units of property owned by the defendant, constituting its transmission system, and more particularly designated and described in the inven-

tory and valuation made by Ford, Bacon & Davis, and filed herein, and testified to by the witness, John T. Kimball, and designated as Company Exhibit No. 1, and as follows, to-wit:

(1) The Menifee Compressing Station.
(2) The Red Bush Compressing Station.
(3) The Main line from Inez to Lexington.
(4) The Red Bush Branch line.
(5) The Johnson-Magoffin Branch line.
(6) The Mt. Sterling Branch line.
(7) The Paris Branch line.
(8) The Sitka Branch line.
(9) The Kentucky Cities Branch line.
(10) The Telephone line.

(c) That the Commission state separately the value which it places on the several units of property owned by defendant and constituting its distribution system property, and specifically set out on the aforesaid Exhibit as follows:

(1) The Lexington Urban distribution property owned by Central Kentucky Natural Gas Company.
(2) The Winchester Distribution property.
(3) The Mt. Sterling Distribution property.

(d) That the Commission state separately the value which it places on the property designated in the aforesaid Exhibit as "General Property", consisting of office furniture and fixtures.

[fol. 11] (e) That the Commission find and state by its order what amount, or amounts, if any, are assigned by the Commission to the values placed by the Commission on the defendant's property aforesaid, both in the aggregate and in detail as hereinbefore set out, for or on account of Construction Overheads and specifically as follows:

(1) Engineering during construction.
(2) Legal expenses during construction.
(3) Administration expenses during construction.
(4) Taxes, insurance and damages during construction.
(5) Interest during construction.

(f) That the Commission find and state separately by its order entered herein what, if any, amount is allowed or included by the Commission in the valuation of the defend-

ant's property for or on account of organization and promotion expense.

(g) That the Commission find and state separately by its order entered herein, what amount, if any, is allowed and included by the Commis-ion in the valuation of the defendant's property for or on account of Cost and Financing.

(h) That the Commission find and state separately by its order entered herein, what amount, if any, is allowed or included by the Commission in the valuation of the defendant's property for or on account of the following two items:

(1) Going concern value.
(2) Cost of obtaining new franchise.

(i) That the Commission find and state separately by its order entered herein what amount, if any, is allowed or included by the Commission in the value placed by the Commission on the defendant's property for or on account of working capital, consisting of the following two items, to-wit:

[fol. 12] (1) Material and supplies.
(2) Cash required for operation.

(j) That the Commission ascertain and find and state by its order the aggregate gross revenue which shall be estimated by the Commission the defendant will receive under the rate or charge, which shall be fixed and ordered by the Commission; that the Commission further ascertain and find and state by its order specifically as follows, to-wit:

(1) The operating expenses of the defendant as estimated by the Commission.

(2) Whether, in determining the estimated operating expenses, the Commission holds that the gas purchased by the defendant, in excess of the gas purchased from the Petroleum Exploration Company, should be included as an operating expense at a flat rate per thousand cubic feet, and if so, at what rate.

(k) That the Commission shall determine and state by its order as to whether, in determining the cost of purchased gas by the defendant under its various purchase contracts, as an operating expense, the prices agreed to be paid by the defendant under said purchase contracts, should be disre-

garded and said contracts ignored, including the contract between the defendant and United Fuel Gas Company.

(l) As to whether, in determining the amount which should be paid by the defendant to the Lexington Utilities Company as rental, the sum of $10,000.00 should be deducted from the rental paid by the defendant, and as contended by the complainants should be deducted.

(m) What amount or amounts, if any, the Commission holds should be allowed out of gross revenue as necessary for amortization, depletion, extraordinary maintenance and contingencies both in the aggregate and separately.

[fol. 13] (n) The rate of return which the Commission shall hold should be allowed to the defendant as reasonable and sufficient.

(o) That the Commission state separately by its order entered herein what, if any amount for cost of cutting and replacing pavement over the existing mains or pipe lines used in the distribution of gas to consumers in the Lexington district and the Commission shall hold should be allowed and included in the value of the defendant's property or of the property of the Lexington Utilities Company as the same shall be fixed by the Commission.

D. L. Hazelrigg, Chester J. Gerkin, Allen, Botts & Duncan, Attorneys for Central Kentucky Natural Gas Company.

Plaintiff further says that said Commission thereupon the same day overruled said motions and refused to make any findings of fact as requested in said motions, and the said order of said Commission which is herein complained of, overruling said motions was and is as follows:

"Before the Railroad Commission of the State of Kentucky

City of Lexington and S. B. Featherstone, Complainants,

vs.

Central Kentucky Natural Gas Company, Defendant

Order

This day came the defendant and filed herein certain motions, to the granting of which the complainants objected,

[fol. 14] and the same being heard, it is now ordered that each and all of said motions be and the same now are overruled, to which ruling the defendant objects and excepts."

Plaintiff says that thereupon and on the same day, to-wit, October 9th, 1929, the said Commission entered the order which, among other things, fixed the rate herein complained of, and said order which is herein complained of was and is as follows:

IN THE RAILROAD COMMISSION OF KENTUCKY

CITY OF LEXINGTON et al., Complainants,

vs.

CENTRAL KENTUCKY NATURAL GAS COMPANY, Defendant

ORDER—Entered Oct. 9, 1929

This cause which involves the fixation of just and reasonable rates for the sale of natural gas by the Central Kentucky Natural Gas Company in the City of Lexington, Kentucky, and whether the charges and rates set up by said Company in its schedules, on file with the Commission, for the sale of such gas in said City are, upon the one hand, extortionate, or, upon the other hand are just and reasonable, coming on to be heard upon the pleadings, evidence, exhibits, and briefs and arguments of counsel for both sides, and the Commission being sufficiently advised, adjudges and orders as follows, to-wit:

[fol. 15] First. That the rates and charges for natural gas as set up in defendant's schedule therefor, on file with the Commission, and for which it has contended in the said hearing, are each and all unreasonable and extortionate.

Second. That a flat rate and charge (which shall not be increased by any other charge or device of any kind or description) of forty-five (45¢) cents per one thousand cubic feet for the gas sold by said Central Kentucky Natural Gas Company to its customers under its Lexington, Kentucky, franchise is a fair and reasonable rate and charge therefor, which rate and charge shall be and is the lawful and valid rate and charge therefor effective from and after January 28th, 1927, (the effective date of said franchise)

and until such charge or rate may be otherwise fixed by law or by the agreement of parties.

Third. That defendant Company has the right, in addition to said forty-five cents per thousand cubic feet, to charge to and collect from any customer or customers three (3¢) cents per thousand cubic feet for any gas not paid for within ten (10) days after bill therefor is mailed or delivered to such customer or customers.

Fourth. That the Central Kentucky Natural Gas Company filed herein, at the inception of this hearing and controversy, a copy of its ordinance-franchise whereunder it is operating in the City of Lexington; that said franchise-contract made certain stipulations and provisions about the fixation of rates under it, and that the Commission had conformed its procedure as near as might be to the agreements of the said franchise-contract. That it is provided in Section 4 (E) of said franchise-contract that pending the final determination of just and reasonable rates and charges by this Commission and including any subsequent proceedings in Court, the defendant Company shall have [fol. 16] the right to charge not to exceed sixty (60) cents per thousand cubic feet for its gas; and that in order to afford either side hereto the right, if it be so desired, to proceed in the courts with respect to such fixation of rates, the application of the forty-five cent rate hereby fixed is suspended for a period of thirty (30) days from the entry of this order; that if within said thirty day period either side shall have filed such proceeding in court, then the application of the forty-five cent rate hereby fixed shall be suspended until there by a final fixation in court of said rates, and subject to such modification, if any, of said rate as may be fixed by said Court or Courts; but that if no such proceeding be filed in said time, then the said forty-five cent rate shall at once be put into force and effect.

That it be specifically recited and reserved, however, that no such suspension of the application of said forty-five cent rate shall affect the fact that it, or it as modified by the Courts, shall be effective from said 28th day of January, 1927.

Fifth. That as appears of record herein there have been impounded under the control and orders of the Commis-

sion, as provided in Section 4 (E) of said franchise, considerable sums of money out of the collections made by defendant Company as under the temporary rates by said section provided, which sums of money are to be distributed as under the orders of the Commission and as under the orders of the courts, to which this controversy may be taken by the parties thereto. In consideration thereof it is ordered:

(a) That John H. Carter as Special Receiver do file within thirty days from this date a full report of all sums received by him, the dates of his such receipts, the expenses [fol. 17] and allowances incident thereto, how said funds are now held and invested, and the net amount thereof in his hands as such Receiver.

(b) That upon the motion of plaintiff said defendant company is ordered, within thirty days from this date, to file with this Commission a full and detailed statement and exhibit of the names of each and all customers who have contributed to said funds, and the time and amounts of their several contributions thereto.

(c) That if there be instituted as within thirty days named in section four hereof, by either party, any suit to further try the rate controversy which is the subject of this proceeding, that the said impounded funds be retained in the custody and control of this commission, and not distributed until said Court proceedings have been fully determined but that if said proceeding be not instituted in said thirty days, that this Commission will proceed to the distribution of said funds as may be proper in the premises.

That it be specifically reserved and recited, however, that nothing herein shall affect the right and obligation of the Commission to finally pay out said funds as under its fixation of rates herein made, or as same may be modified by the courts, and as is provided in said franchise-contract.

Sixth. That if either party hereto shall institute the proceedings in court named in sections four and five hereof, said party will at the same time file with this Commission, and deliver to the opposing side, a copy of the pleadings by which such proceedings are taken and a statement of the date upon which same are filed."

A copy of the aforesaid franchise ordinance marked for identification Exhibit "A" is filed herewith as a part hereof.

Plaintiff also files herewith as part hereof a true copy of Sections 201e-1 to 201e-26 both inclusive of the Statutes of [fol. 18] the State of Kentucky, Carroll's Sixth Edition thereof, marked Exhibit "B".

VI

Plaintiff says that under and by its order aforesaid, said Commission fixed and ordered a rate of 45 cents per thousand cubic feet as a just and reasonable rate for the natural gas service of the plaintiff to consumers of natural gas in the said City of Lexington, and plaintiff says that said rate of 45 cents is less than a just and reasonable rate and is confiscatory as herein shown, and the enforcement thereof against the plaintiff would be in violation of the plaintiff's rights under and as prescribed by the Fourteenth Amendment to the Constitution of the United States, in that said rate and its enforcement would deprive the plaintiff of its property without due process of law, would constitute a denial to the plaintiff of equal protection of the law, and said rate is and its enforcement would also be in violation of the plaintiff's rights under Section 13 of the Constitution of the State of Kentucky, in that said rate and its enforcement would deprive the plaintiff of its property without just compensation.

VII

Plaintiff states that for a number of years last past it has been and is now engaged in the business of mining for, producing, selling, marketing and distributing to the purchasers and consumers thereof natural gas, the said business of plaintiff being the furnishing of natural gas to consumers residing in and immediately adjacent to the City of Lexington, known as the Lexington District, also to consumers residing in and immediately adjacent to the City of Mt. Sterling, known as the Mt. Sterling District, also to consumers residing in and immediately adjacent to the City of Winchester known as the Winchester District, and [fol. 19] in addition thereto the furnishing of gas to certain wholesale consumers. For such purpose the plaintiff owns

and holds lands, leasehold estates, pipe lines, compressor stations, tools, machinery and other equipment necessary for the conduct of such business and useful for such purposes, and that all of its said property so owned is located in the State of Kentucky and in the Eastern District thereof. Plaintiff further says that in addition to its own property aforesaid used and useful in rendering said gas service the plaintiff has at all times aforesaid used and now uses the plant or distribution system located within the corporate limits of the City of Lexington and owned by the Lexington Utilities Company, which said property is used and useful in rendering said gas service in the City of Lexington, and said property so owned by the Lexington Utilities Company consists of pipe lines, meters, regulators and other physical property. Plaintiff says that the fair and reasonable value of the properties used and useful in furnishing said gas service and owned by the plaintiff, after making all due allowance and deductions for existing depreciation in the physical property, was not less than $5,610,829.00, as of December 31st, 1926, (the date certain in this case), and is substantially higher than said amount at the present time; and plaintiff further says that the fair and reasonable value of the property leased by it as aforesaid and owned by the Lexington Utilities Company and used and useful in furnishing said gas service to consumers in Lexington, after making all due allowances and deductions for depreciation in the physical property, was not less than $730,069.00 as of the date aforesaid, and is substantially higher at the present time. And plaintiff says that the total fair and reasonable value of the combined properties [fol. 20] aforesaid owned and leased by the plaintiff as aforesaid, used and useful in furnishing said gas service, after making all due allowances and deductions for existing depreciation of the physical property was not less than $6,340,895.00 as of December 31, 1926 (being the date certain in this case), and is substantially higher than said amount at the present time.

Plaintiff further states that the said entire property used and useful in said gas service may for convenience and should be divided into two classifications, physical or tangible, and intangible. The physical or tangible properties may and should be divided into (a) the production

system, which includes the property used in producing the gas and delivering it to the pipe lines of the Company to be conveyed to market; and (b) the transmission system, which includes the pipe lines and compressor stations used in transmitting the gas for delivery to the distribution systems in the several towns and cities where it is engaged in the public service business as well as to the wholesale consumers; (c) the distribution system, which includes the value of the plants, including street mains, meters and all other machinery and devices used by the Company in delivering the gas after it reaches the city limits to the consumers; (d) and general property, which includes the office furniture and equipment; the general overheads, or undistributed Construction Expenditures, which are made up of, (1) organization cost, and (2) construction overheads, which latter consist of (a) Engineering during Construction, (b) Legal Expense during Construction, (c) Administration during Construction, (d) Insurance and Damage during Construction, none of which are included in the cost of Labor and materials going into the plant, but are a part [fol. 21] of the total cost of the constructed plant; (3) cost of financing, which is the cost of the service for assembling the necessary capital to construct the plant; (4) working capital, which is made up of, (a) Materials and Supplies, which include materials and supplies necessary to have on hand in the operation of the Company, and (b) Cash necessary for carrying on the business.

The intangible properties may be and should be divided into (a) going concern value—that is, the element of value or property in an assembled and established plant doing business and earning money upon which the owner has the right to make a fair return; and (b) Cost of Obtaining New Franchises, which is the actual cost expended by the Company in procuring its franchises under which it is permitted to operate within municipalities.

Plaintiff states that the aforesaid items and the fair and reasonable value thereof, and which constitute the aforesaid entire combined properties of plaintiff and said Lexington Utilities Company, used and useful in said gas service, and that portion properly allocated to the Lexington District and used and useful in said Lexington District, were as of December 31, 1926, as follows:

[fol. 22] Properties of the Central Kentucky Natural Gas Company

	Entire system	Portion allocated to Lexington District
1. Production system properties	$2,350,064	$1,325,899
2. Transportation system properties	1,594,556	694,060
3. Distribution system properties	262,295	83,754
4. General properties	1,509	852
Total fair value of physical properties of the Central Kentucky Natural Gas Company as of December 31, 1926	$4,208,439	$2,304,565
General Overheads:		
5. Construction overheads	426,515	229,395
6. Organization costs	101,600	57,323
7. Cost of financing	146,028	79,093
Total General Overheads	$674,143	$365,811
Intangible Capital:		
8. Going Concern Value	$488,257	$304,867
9. Cost of buying new franchise	100,000	73,410
Total Intangible Capital	$588,257	$378,277
Working Capital:		
10. Materials and Supplies	$6,551	$4,563
11. Cash required for operations	133,449	78,468
Total Working Capital	$140,000	$83,031
Total fair and reasonable value of entire properties of Central Kentucky Natural Gas Company, used and useful in furnishing its gas service	$5,610,829	$3,131,684

Properties Owned by Lexington Utilities Company

	Entire system	Portion allocated to Lexington District
1. Distribution System	$600,008	$600,008
2. Construction Overheads	77,614	77,614
3. Organization Cost	26,650	26,650
4. Total Cost of Financing	25,797	25,797
Total fair value of properties of Lexington Utilities Company as of December 31, 1926	$730,069	$730,069
Total fair and reasonable value of property of Central Kentucky Natural Gas Company used and useful in furnishing its gas service including the property of Lexington Utilities Company used and useful in furnishing said gas service as of December 31, 1926	$6,340,898	$3,861,753

[fol. 23] Plaintiff avers (and it is common knowledge) that the business of mining for, producing, selling, marketing and distributing natural gas is one of exceptional

hazard, and that the subject matter of the investment therein is exhausted in its use within a comparatively short period of time, and by reason thereof the investment in and the acquisition and development of natural gas lands, and in the facilities for the transportation of natural gas to points of consumption must be amortized within the life of the producing fields from which natural gas is or may be obtained, and such necessity for amortization exists alike where the producing fields are owned by the distributing company or are owned by other producers from whom gas is purchased by the distributing company for sale and distribution. Plaintiff says that a rate of return upon the value of the property of such distributing company, used and useful in the public service, which fails of does not take into account the factors aforesaid is unjust, unreasonable and confiscatory.

Plaintiff further states that under a rate of 45 cents for gas at Lexington its gross earnings for the year 1926 would have been $1,003,952 for its entire system and $598,777 for the Lexington District; that its operating expenses for said year would have been $767,235, for its entire system; and $448,655 for the Lexington District; that the net earnings for said year, after paying operating expenses, but without making any allowance whatever for taxes, would have been $236,715 for the entire system and $150,122 for the Lexington District. That said accounts would be insufficient for depletion, depreciation, amortization, extraordinary maintenance and a reasonable allowance for con- [fol. 24] tingencies, both for the entire system nad for the Lexington District, and would leave nothing for a return on plaintiff's property used and useful in rendering said service, either for the entire system or for the Lexington District, and plaintiff states that under said 45 cent rate it would be compelled to furnish said gas service at an actual loss, both for its entire system and for the Lexington District, and the same would be true for the years 1927 and 1928, that under said 45 cent rate at Lexington the revenue available for said purposes would have been less in 1927, and in 1928 than they were in 1926, as based on actual operations.

VIII

Plaintiff states that prior and subsequent to the purchase by it of its present franchise from the City of Lexington, it was contended by the City of Lexington that the rental paid by the plaintiff to the Lexington Utilities Company for the use of the distribution system owned by said Company was in excess of a fair return upon the fair value of said property, and that in determining the rates and charges for service in Lexington said lease agreement should be disregarded and the rental paid thereunder omitted and left out of consideration as an operating expense, but the fair value of the property owned by the Lexington Utilities Company should be added to the fair value of the property owned by the plaintiff and properly allocated to the City of Lexington, for the purpose of arriving at and determining the total fair value of the property used and useful in rendering said service in Lexington, and that such total fair value should be adopted and considered as the rate base upon which the plaintiff should be allowed a fair return. Plaintiff says that by reason [fol. 25] of said contention it caused to be made an inventory and valuation of the said property of the Lexington Utilities Company and the said City of Lexington did the same, and evidence thereof was introduced before said Railroad Commission by both the plaintiff and the City of Lexington, and the plaintiff says that the aforesaid complaint filed as aforesaid before the said railroad commission by the City of Lexington and others against this plaintiff charging that the rates and charges promulgated by the plaintiff as aforesaid were excessive and extortionate, and the issues created by the pleadings filed in said proceeding, were all practiced and heard by the parties thereto upon the contention and theory of the said City of Lexington, that the fair value of the property owned by said Lexington Utilities Company and used and useful in rendering said service should be included as part of the rate base upon which a fair return to the plaintiff should be predicated. Plaintiff says that the said railroad commission refused on motion of the plaintiff to state in its order aforesaid fixing the said rate of 45 cents, as to whether it found in fact the said property of the Lexington Utilities Company should be included with or omitted from the

rate base on which to determine a fair return, and the plaintiff is unable to state whether the aforesaid 45 cent rate as fixed by the Commission was arrived at or intended to be arrived at and determined by said Railroad Commission on the basis of including in the rate base the fair value of the property of said Lexington Utilities Company and omitting from operating expenses the amount paid by plaintiff as rental under said lease agreement, or whether said Railroad Commission intended in determining and fixing said rate of 45 cents, to exclude from the rate base the said property owned by said Lexington Utilities Company, and to include in the operating expenses of the plaintiff the rental paid by the plaintiff to said Company. But plaintiff says, assuming that said Railroad Commission in fixing said 45 cent rate intended to exclude from the rate base the value of the aforesaid property owned by said Lexington Utilities Company, and to treat the said rental as an operating expense, then on that basis, the plaintiff's net earnings available for a return on the fair value of its property as aforesaid would be, under said 45 cent rate, less than if the fair value of the property owned by said Lexington Utilities Company were included in the rate base on which plaintiff would be entitled [fol. 26] to earn a fair return, and plaintiff says it is at least fair to its consumers at Lexington to include the fair value of said property owned by said Lexington Utilities Company, with the plaintiff's property aforesaid as part of the rate base on which the plaintiff is entitled to earn a fair return.

IX

Plaintiff says that pursuant to the terms of said franchise contract, and within two days after the effective date of said contract, it promulgated in writing the rates, charges and compensation which it then deemed to be just and reasonable, and which it proposed to charge for its gas service in the City of Lexington, and filed copies thereof with the Mayor of the City of Lexington and with said Railroad Commission. Plaintiff says that after filing its first promulgated rates it ascertained and determined that said rates would not yield to the plaintiff a fair return on the value of its property used and useful in said service,

and thereafter and during the pendency of said hearing before said Railroad Commission the plaintiff filed a new schedule of rates which it proposed to charge under said franchise contract as and from the effective date thereof, and which it contended before the said Railroad Commission were just and reasonable rates and charges. Plaintiff says that said new or amended schedule of rates and charges was and is as follows:

A monthly customer charge of 75¢.

The following monthly charge for gas:

[fol. 27] For the first 5,000 cubic feet, 65¢ per M. C. F.

For the second 5,000 cubic feet, 60¢ per M. C. F.

For all over 10,000 cubic feet, 55¢ per M. C. F.

Plaintiff says that said schedule is and would be equivalent to a flat rate of slightly in excess of 69 cents. Plaintiff says that any rates or charges less than said rates and charges would be confiscatory and would be in violation of the rights of the plaintiff under the Fourteenth Amendment to the Constitution of the United States as hereinbefore set out, and in violation of the rights of the plaintiff under Section 13 of the Constitution of Kentucky, as hereinbefore set out. Plaintiff says that even under said schedule of rates the net revenue which would be earned thereunder and which would be available for the purposes of depreciation, depletion, amortization, extraordinary maintenance and contingencies and for profit, would be insufficient for said purposes, and would not produce revenues sufficient to yield to the plaintiff a fair return on the value of its property used and useful in said service. Plaintiff says that said rates and charges as set out in the aforesaid schedule of rates, which the plaintiff contended before said Railroad Commission should be ordered and allowed as at least just and reasonable rates, would produce the following results when applied to the estimated sales to the customers of gas in the entire system and in the said City of Lexington or the Lexington District on the basis of past sales adjusted to said schedule of of rates.

	Entire system	Lexington district
Gross Revenues	$1,207,435	$747,995
Operating Expenses	917,412	528,310
Net Revenues available to cover profit, depreciation, depletion, amortization, extraordinary maintenance and contingencies	$290,023	$219,685

[fol. 28] Plaintiff further says that under the provisions of the Kentucky Statutes, Sections 201e-1 to 201e-21, and particularly under Section 201e-21, it is made the duty of the Attorney General of the Commonwealth of Kentucky to represent the Railroad Commission in proceedings to enforce its orders and in the prosecution of persons and corporations charged with violation of such orders, and this plaintiff is informed and believes that the defendant, J. W. Cammack, now Attorney General of said Commonwealth of Kentucky, will, unless restrained and inhibited as hereinafter prayed, undertake to enforce the said order of said Commission, herein complained of, and to prosecute this plaintiff under the provisions of said statutes, if the plaintiff should fail to obey said order.

XI

Plaintiff says that other sections of said Statutes, (Sections 201e-1 to section 201e-21—Kentucky Statutes) and particularly Section 201e-12, provide for the prosecution of Natural Gas Companies by indictment or penal actions for charging and collecting any rates or charges in excess of alleged just and reasonable rates or charges in the name of the Commonwealth of Kentucky upon information filed by the Railroad Commission and that such Company shall also be liable for damages to the party aggrieved in the amount of damages sustained, together with the costs of suit and attorney's fee to be fixed by the Court, but such indictment shall be made only upon recommendation of the Railroad Commission; and plaintiff says that under Section 201e-14 it is provided that if any natural gas company or any officer, agent or employe of such company should [fol. 29] charge, collect or receive any greater or higher rate for its service than the rate ordered by said Commission, said Company and each of such officer, agent or employee shall be guilty of extortion and on conviction shall be subject to very heavy penalties, of $1,000 for the first offense, $2,000 for the second offense, and $5,000 for the third and successive offenses; and plaintiff says that if it fails to obey the said order of the Railroad Commission, it is liable to indictment or penal action and to the enormous penalties aforesaid, and further to numerous suits

for damages, unless the defendant, the Railroad Commission, is restrained from filing information or recommending or requesting such indictment, and unless the defendant, J. W. Cammack, be enjoined and restrained from instituting or prosecuting any such penal action or criminal proceedings, and unless the defendants and all other persons acting by or through said defendants or otherwise, be enjoined and restrained from instituting any action or proceeding against the plaintiff under or by virtue of the order of said Railroad Commission fixing and ordering the said 45¢ rate for gas service at Lexington.

XII

Plaintiff says that said Railroad Commission by its order aforesaid and herein complained of, ordered that said 45¢ rate should be a flat rate and charge for all gas furnished by the defendant in said City of Lexington from and after January 28, 1927, which said date was declared to be in said order the effective date of said franchise contract, but plaintiff says that the effective date of said franchise contract was February 25, 1927, and the aforesaid order of said Railroad Commission fixing the said rate for gas furnished by the defendant for any period of time prior to February 25, 1927, was and is void, and the attempted enforcement thereof which is threatened as aforesaid, would be in violation of the plaintiff's rights under the Fourteenth Amendment of the Constitution of the United States, and under Section 13 of the Constitution of Kentucky.

[fol. 30] Plaintiff says that the Railroad Commission undertook by said order to provide that if within thirty days after the entry of said order either side to said controversy should have filed any proceedings in Court with respect to said rate, then the application of said rate should be suspended until there should be a final fixation in Court of said rate, but plaintiff says that said attempted or pretended order is void and invalid because the same is in excess of the powers of said Commission; that the duties and powers of said Commission are regulated by the Sections of the Kentucky Statutes hereinbefore mentioned and it is expressly provided therein and particularly under Section 201e-14 that the rate or charge for any public service, in-

cluding natural gas service, which shall be ordered by said Commission should be and become effective within ten days thereafter, and under said Statute the said Railroad Commission has no power or authority other than to order a rate or charge, and is wholly without any power to suspend any rate or charge which should be ordered by said Commission. Plaintiff further says that by said order said Commission provided that if no such proceeding should be filed within said period of thirty days, that said 45 cent rate should be put into force and effect at once. Plaintiff says that the said rate so ordered by said Commission, will, under the aforesaid Sections of the Kentucky Statutes, and particularly under Section 201e-14 thereof, be and become effective at the expiration of ten days from the entry of said order, or in any event at the expiration of thirty days from said date, and the plaintiff will then be and become subject to prosecution and fine and to further proceedings by said Commission for the enforcement of said order as hereinbefore set out, and to a multitude of actions for damages and for awards, unless the defendants [fol. 31] are enjoined therefrom by the order of this Court.

XII-

Plaintiff says that under Sub-Section E of Section 4 of said Franchise Ordinance it was and is provided that pending final determination of the fixing of just and reasonable rates and charges by said Railroad Commission, and including any subsequent proceedings in Court, it should have the right to charge, receive and collect as temporary rates and charges, not to exceed fifty cents per thousand cubic feet of gas until the Company was furnishing gas through a pipeline of sufficient capacity, or (should the purchaser of said franchise have the ten inch pipeline mentioned in Section 23 of said Ordinance)—which was the fact as to the plaintiff—through two pipe lines as provided in Section 23 of said Ordinance, and after it should be furnishing gas through a pipe line of sufficient capacity, or, as aforesaid, through two pipe lines, not to exceed sixty cents per thousand cubic feet of gas, but provided that of the amount collected under such temporary rates the Company should, under the direction or control of said Railroad Commission or of the Court, impound ten cents per one thousand cubic feet until the final fixation of just and reasonable rates and

charges as aforesaid. Plaintiff says that pursuant to said provisions of said franchise contract it collected a temporary rate of fifty cents from and after the effective date of said franchise contract up to and including the gas furnished during the month of November, 1927, at which time the plaintiff was furnishing gas through two pipe lines as aforesaid, and beginning with the month of December, 1927, the [fol. 32] plaintiff collected sixty cents per thousand cubic feet, and that out of said temporary rates so collected there was and has been impounded ten cents per thousand cubic feet, which impounded fund is now held under the orders of said Railroad Commission by John H. Carter as custodian thereof, and the amount of said impounded fund is over $200,000.00.

Plaintiff says that by its order aforesaid the said Railroad Commission is threatening to and will unless restrained and inhibited therefrom by the order of this Court, distribute said impounded fund to the consumers from whom the same was collected, to the great and irreparable damage of the plaintiff.

Plaintiff states that the aforesaid temporary rates of fifty and sixty cents were and are less than just and reasonable rates, and that under just and reasonable rates said entire impounded fund belongs to and should be paid over to the plaintiff.

Plaintiff further says that of said sixty cent temporary rate it retained fifty cents, and that under the aforesaid forty-five cent rate as fixed by said Commission, this plaintiff would be required to refund and pay to the consumers paying said fifty cent rate, the difference between the forty-five cent rate and the said fifty cent rate, to-wit: five cents per thousand cubic feet. Plaintiff says that there has already been filed with said Commission a petition on behalf of many thousands of consumers seeking to have said Commission order and make awards to said consumers of amounts paid by them in excess of forty-five cents, and to order and require this plaintiff to pay over to said Commission for distribution to said consumers the amount collected by the plaintiff under said sixty-cent rate and retained by it in excess of said forty-five cent rate. And plaintiff says that by reason of the order of said Commission fix-[fol. 33] ing said forty-five cent rate, it is now threatened with a multiplicity of suits and harassing and expensive liti-

gation, and that unless restrained by the order of this Court said Commission will proceed to make such awards, and will order this plaintiff to pay over to said Commission for distribution as aforesaid the amount collected by it in excess of said forty-five cent rate as hereinbefore set out, to the irreparable injury and damage of the plaintiff.

Plaintiff further says that under Sub-Section E of Section 4 of said Ordinance, it is provided that this Company should keep an accurate record of all sums paid in by the consumers under said temporary rates, and that the Company should, on demand from the City and if so ordered by said Railroad Commission or other tribunal or court, file with the Railroad Commission or Court where said proceedings or suit may be pending, a full and detailed statement of the amounts and times and sums contributed by each customer to said funds, but plaintiff says it was the purpose and intent and is the true meaning of said contract provision that such detailed statement should be filed only upon the final fixation of rates by said Railroad Commission and including any subsequent proceedings in Court; but plaintiff says that in violation of the true meaning of said ordinance the said Commission has, by its order aforesaid arbitrarily ordered and directed the plaintiff to file, within thirty days from the date of said order, with the Commission, a full and detailed statement and Exhibit of the names of each and all customers who have contributed to said impounded funds, together with the times and amounts of their contributions thereto, and plaintiff says that the cost of preparing and making such detailed statement and Exhibit [fol. 34] will not be less than $10,000.00, and that such expense is premature and unnecessary at this time and such expense will never be necessary at any time for under just and reasonable rates and charges for its gas service said entire impounded fund should be ordered to be paid to the plaintiff and belongs to the plaintiff, and it will never become necessary for the plaintiff to prepare or file such statement. Plaintiff says that in the event this Court shall adjudge the schedule of rates promulgated by the plaintiff as hereinbefore set out to be just and reasonable rates and charges it will never become necessary for the plaintiff to be required to file any such statement or Exhibit either in Court or before said Railroad Commission, or by reason of such finding and judgment of this Court, the entire impounded fund

would belong to the plaintiff, and plaintiff says that unless restrained by the orders of this Court, the said Commission will undertake to enforce the aforesaid order to the irreparable injury and damage of the plaintiff, and in violation of its rights under the Constitution of the United States and under the Constitution of Kentucky as hereinbefore set out.

XIV

Plaintiff says that it further complains of the order entered by said Commission fixing said 45 cent rate upon the ground that said Commission failed and refused to state and set out therein the fair value of the plaintiff's property used and useful in rendering said service, and upon which the plaintiff is entitled to earn a return, and plaintiff says that said refusal on the part of said Commission, and the ordering of said rate without fixing and setting out in its order the value of the plaintiff's property on which said Commission considered the plaintiff entitled to earn a return, was [fol. 35] arbitrary and in violation of the legal duties of said Commission, and of the rights of the plaintiff, and by reason thereof the order of said Commission is void.

XV

Plaintiff further says that under the aforesaid Sections of the Kentucky Statutes, it is the duty of said Commission to order rates and charges which shall not be discriminatory, and under said franchise contract the plaintiff is entitled to charge and collect just and reasonable rates and charges. Plaintiff says that in the schedule of rates promulgated by it as hereinbefore set out, there is included a monthly service charge of 75 cents, and plaintiff says that such service charge is reasonable and necessary in order to avoid discriminatory rates. Plaintiff says that under said flat rate of 45 cents as ordered by said Commission and under any flat rate for its gas service, there are many thousands of consumers of gas in said City of Lexington who do not and would not consume and pay for enough gas to reimburse the plaintiff for the actual cost of rendering said service, and plaintiff says that under said flat rate of 45 cents this plaintiff would be compelled to furnish its said gas service to more than forty percent of the entire number of consumers in said City of Lexington and the Lexington

District, which aggregate about 11,000 consumers, at less than the actual cost to the plaintiff of furnishing said service, and by reason thereof the plaintiff would be deprived of its property without due process of law and without just compensation, and in violation of its rights as hereinbefore set out, all to the irreparable injury and damage of this plaintiff.

[fol. 36] Plaintiff has no plain, speedy or adequate remedy at law.

Wherefore the plaintiff prays:

1st. That the rate prescribed in said order of October 9th, 1929, be decreed to be confiscatory, in violation of the Constitution of the United States and of the Constitution of Kentucky and said order imposing the same to be void;

2nd. That the defendants and each of them, and all other persons acting in concert with them or by their authority or otherwise, be temporarily and permanently restrained and enjoined from any attempt to compel the plaintiff, its officers, agents and employes, to observe or put into force the rate for natural gas service prescribed by said order of October 9th, 1929;

3rd. That the defendants and each of them and all other persons acting in concert with them or by their authority or otherwise, be temporarily and permanently restrained and enjoined from taking any steps or proceedings against the plaintiff, its officers, agents or employes, to enforce any penalty or other remedy for disregarding the rate prescribed by said order.

4th. That the defendant Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. M. Lauhon, members constituting said Railroad Commission, be temporarily and permanently restrained and enjoined from distributing the impounded fund in the custody of John H. Carter to the consumers from whom the same was collected, and from requiring the plaintiff to file with said commission any [fol. 37] statement or exhibit of the names of such consumers and the time and amounts of their several contributions to said impounded funds; and on final hearing, that

said defendants be directed by mandatory injun-tion to deliver and pay the said fund to the plaintiff.

5th. That the defendants, Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission be temporarily and permanently enjoined from awarding to consumers of the plaintiff amounts heretofore paid by them in excess of forty-five cents and from requiring the plaintiff to pay over to said Commission for distribution to consumers the amount collected by the plaintiff under its sixty-cent temporary rate and retained by it in excess of forty-five cents.

6th. That the plaintiff have such other and further relief as may be just and equitable in the premises.

May it please Your Honor to grant unto the plaintiff a writ of subpœna directed to said defendants, the Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission, J. W. Cammack, Attorney General of the Commonwealth of Kentucky, City of Lexington, and S. B. Featherstone, individually and as representing all other persons similarly situated, commanding them and each of them, on a day certain to be named therein, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath, answer under oath being hereby expressly waived, all and singular the premises and to perform and abide by such orders, instructions or decree as may be made against them in the premises, and that pending the final hearing of this cause a temporary restraining order may be issued as above prayed.

Central Kentucky Natural Gas Company, by H. A. Wallace, President. (Seal.)

[fol. 38] *Duly sworn to by H. A. Wallace. Jurat omitted in printing.*

[fol. 39] EXHIBIT "A" TO BILL OF COMPLAINT

No. 3346

An ordinance directing the Mayor of the City of Lexington, Kentucky, to sell a franchise, authorizing the purchaser to acquire, construct, extend, maintain and operate in the streets, alleys and public places of the City of Lexington a system of mains, pipe lines, and other facilities for the distribution and sale of natural gas, mixed gas, or manufactured gas to the City of Lexington, Kentucky, to sell a franchise authorizing the terms and conditions thereof

Be it ordained by the Board of Commissioners of the City of Lexington, Kentucky:

Article I. That the Mayor of the City of Lexington, Kentucky, be and he is hereby directed to sell, upon the terms hereinafter set forth, the following franchise, viz:

Franchise

Section 1. The purchaser of the franchise, hereinafter called the "Company" and its successors and assigns is hereby granted for the term and subject to the terms, conditions and limitations hereinafter stated the right to acquire, construct, install, erect, maintain, use, and remove within six months from the expiration of this franchise but not upon its forfeiture, mains, pipe lines, governors, services and other facilities in, upon, along, through, across and under the streets, alleys and public places of the City of Lexington, hereinafter called the "City," and on and under the bridges and viaducts owned and controlled by the City, for the purpose of transmitting, distributing and selling natural gas, mixed natural and manufactured gas, hereinafter designated as "mixed gas," or manufactured gas within the boundaries of the City as they now exist or may hereafter be extended, and to acquire, construct, maintain and operate manufacturing stations and other property for said purpose.

Sec. 2. The grantor of this franchise is the City of Lexington.

* * * * * * *

Sec. 4. (A) The Company shall have the right to charge, demand, collect and receive for its gas service just and reasonable rates, charges or compensation.

(B) The Company shall, within two (2) days after the effective date of the franchise contract promulgate in writing the rates, charges and compensation which it may deem to be just and reasonable and which it proposes to charge for its gas service, and shall on said day file a copy thereof with the Mayor of the City of Lexington and shall also, on [fol. 40] said day, file a copy thereof, and a copy of this Ordinance with the Railroad Commission for the State of Kentucky.

(C) The Board hereby declares that any rate in excess of forty cents ($.40) per one thousand (1,000) cubic feet of gas would be in excess of a just and reasonable rate for such gas service, but this declaration shall not be binding on the Company, nor shall anything herein contained ever restrict the City from contending for a lower, nor the Company from contending for a higher, nor the Railroad Commission of the State of Kentucky or other tribunal in the exercise of a lawful jurisdiction, nor any court in the exercise of its jurisdiction, from fixing a lower or higher rate than forty cents ($.40) per one thousand (1,000) cubic feet of gas.

(D) In the event the rates and charges promulgated and filed by the Company as aforesaid, shall, in the opinion of the City, be in excess of just and reasonable rates and charges then the City shall proceed before the Railroad Commission as provided in Sections 201e-1 to 201e-20 of the Kentucky Statutes, and in such proceeding the Company shall assume the burden of proving that the rates and charges promulgated by it as aforesaid, are just and reasonable.

(E) Pending the final determination of such controversy and the fixing of just and reasonable rates and charges by said Railroad Commission and including any subsequent proceedings in court, the Company shall have the right to charge, receive and collect as temporary rates and charges not to exceed fifty cents ($.50) per one thousand (1,000) cubic feet of gas until the Company is furnishing gas through a pipe line of sufficient capacity, or (should the

purchaser hereof already have that ten inch line named in Section 23) then through two pipe lines, as provided in Section 23 of this ordinance, and after it is furnishing gas through a pipe line of sufficient capacity, or (should the purchaser hereof already have that ten inch line named in Section 23), then through two pipe lines as aforesaid, not to exceed sixty cents ($.60) per one thousand (1,000) cubic feet of gas; but provided that of the amount collected under such temporary rates the Company shall under the direction and control of said Railroad Commission, or of the court, impound ten cents ($.10) per one thousand (1,000) cubic feet until the final fixation of just and reasonable rates and charges as aforesaid. Upon final determination of just and reasonable rates and charges as aforesaid, the sums so impounded together with all interest accumulations thereon shall be distributed under the order of said Commission, or court to the Company, or to its several customers, or in part to each, as the final determination may direct. If the Company during any part of the time prior to said final determination shall have collected sums including or other than those impounded, in excess of the rates and charges as finally determined, it shall then and thereupon repay said excess sums to the several customers who may have made such payments. The Company shall give to each customer a receipt for the amount paid by him pending the final determination of said suit or proceeding. It shall also keep an accurate record of all sums paid in by all and any of its customers under temporary rates and said records shall at all times be open to the City and to any customer as to his own contributions thereto; and the Company on demand from the City, if so ordered by said Railroad Commission, or other tribunal, or court shall file with said Railroad Commission or court, where said proceeding or suit may be pending, a full and detailed statement of the amounts, times and sums contributed by each customer to [fols. 41–43] said funds. In addition to said temporary rates hereinabove provided for, the Company shall have the right to charge three cents ($.03) per one thousand (1,000) cubic feet, if the bill for services is not paid within ten (10) days after said bill is mailed or delivered to the customer.

(F) The rates, charges or compensation to be charged, demanded and collected by the Company as herein provided shall be the total rates, charges and compensation charged, demanded and collected by the Company and they shall not be increased by any other charge or device of any kind or description. The rates, charges and compensation finally fixed and determined as provided in Sub-section (D) hereof shall continue in effect until modified, altered or changed under and pursuant to the provisions of the franchise, as hereinafter provided.

Sec. 5. The Company shall print and file with the Board schedules which shall be kept open for public inspection, showing all rates, charges, compensation, and forms of contract or agreement made, established or enforced or to be enforced to customers in the City, all rules and regulations relating to rates, charges or service rendered or to be rendered, and all privileges and facilities rendered or allowed by the Company to its customers. Such schedules shall also be kept by the Company readily acces-ible to and for convenient inspection by the public in every office of the company where contracts or applications for services are issued or received by the Company. Such schedules shall be immediately produced by the Company for inspection upon the demand of any person.

Sec. 6. The Company shall not charge, demand, collect or receive a greater or less or different compensation for any similar service rendered or to be rendered than the rates and charges applicable to such service and in effect at the time, nor shall the Company refund or remit in any manner or by any device any portion of the rates or charges so specified; nor extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege of facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

Sec. 7. Whenever at any time after the expiration of two (2) years from the date of the final determination of the rates and charges for natural gas, or for mixed gas, or for manufactured gas by the highest court to which the same may be taken, or whenever at any time after the expiration of three (3) years from the date of the fixation of such

rates and charges by any tribunal authorized to regulate such rates and charges, either the City or Company desire to raise the question as to whether or not the rates and charges then in force and effect are just and reasonable, the party so desiring to raise such question shall notify the other party in writing, and in the event they shall not agree upon just and reasonable rates and charges, they shall proceed as provided for in Section 201c-1 to 201c-20, inclusive, of the Kentucky Statutes, or in such other manner as the law may then provide.

* * * * * * *

[fol. 44] Sec. 22. From and after the time when the Company is furnishing gas through a pipe line of sufficient capacity, or through two pipe lines as provided in Section 23, the Company agrees that it will furnish gas to the consumers of the City of Lexington for all usual purposes at all times at a uniform and adequate pressure at the outlet of each customer's meter, subject to conditions beyond its reasonable control, and subject to strikes and riots.

The Company shall provide and install within four months after the date when this franchise becomes effective, and maintain thereafter, not less than five recording pressure gauges in the City of Lexington. Each such gauge shall be located, subject to the direction of the Board, as near as practicable to the point of minimum pressure in its district, and a separate service shall be provided in each case from the main to the gauge, no gas consumption being taken from said service. Each chart taken from these gauges shall be marked with the location of the gauge from which it is taken and the dates it was placed and removed, and shall be filed and preserved by the Company at its office in the City of Lexington for not less than three (3) years. Said charts may be inspected and examined by the Board or its representatives at any time during regular business hours. Within three months after the date when this franchise becomes effective, the Company shall notify the Board of the location of each such gauge. The Company shall also notify the Board of every change in location and of all new locations of gauges within five days from the date of such change or new location.

The Board shall have power to require the Company to [fol. 45] change the location of any such gauge and to install such additional recording pressure gauges as in its judgment are necessary when the limits of the City or the extent of the territory supplied under this franchise may be enlarged or extended and the Company shall, upon written notice from the Board, re-locate such gauges and install such gauges at locations as directed.

Sec. 23. The Company agrees, and such agreement is a condition upon which the franchise is granted, that it will begin or cause to have begun within three months after this franchise becomes effective the construction of, and have in operation or cause to be operated within twelve months thereafter, a main line or lines of pipe from adequate sources of supply of natural gas in the State of Kentucky or in the State of West Virginia to the distribution system in the City of Lexington; said main line or lines shall be of sufficient capacity and shall be provided with sufficient and adequate compressor stations and other necessary equipment to supply such quantities of natural gas as may be required to enable the Company to comply with the terms of this franchise. Provided, however, that if the Company shall have a ten-inch transmission pipe line which is being used for transporting natural gas from the eastern part of the State of Kentucky to the City of Lexington, then the Company shall begin or cause to have begun within six months after this franchise becomes effective the construction of, and have in operation or cause to be operated within nine months thereafter an additional main line or additional lines of pipe from adequate sources of supply of natural gas in the State of Kentucky or the State of West Virginia to the distribution system in the City of Lexington; said additional main line or lines shall be of such capacity and shall be provided with sufficient and adequate compressor stations and other equipment to supply such additional quantities of natural gas as may be required to enable the Company to comply with the terms of this franchise. If the construction and operation of the additional line of pipe as herein provided be delayed by cause or causes beyond the control of the Company, such delay or delays shall not be considered in estimating the time within which the same shall be constructed and put in operation.

It is especially reserved and provided that should the Company fail to have said two pipe lines constructed and supplying gas as is herein provided, the City may, upon six months written notice to the Company, declare this contract at an end.

Sec. 24. The Company hereby agrees and binds itself by the acceptance of this franchise to take all reasonable means and measures necessary to furnish an adequate supply of natural gas to the City of Lexington and its inhabitants at all times during the term of this franchise.

* * * * * * *

[fol. 46] Sec. 27. The City of Lexington and the Company, by the sale and acceptance of this franchise, expressly agree and obligate themselves to comply with all of the terms and conditions of this franchise. The Company by the acceptance of this franchise expressly agrees and obligates itself to comply with all ordinances and regulations passed in accordance therewith. The Company further agrees that in the event that it shall be in default in the observance of performance of any of the terms, conditions, ordinances or regulations herein required to be kept and performed by it, it will pay to the City not less than fifty dollars nor more than five hundred dollars per day, as determined by the Board, or in case of suit, by the Court, for each and every day of default except where it is otherwise specifically provided herein; and if any such default shall continue beyond a period of time, not less than thirty days, which the Board shall designate and of which written notice shall be given to the Company by the Board, the Board shall be entitled to declare this grant and all of the rights and privileges of the Company hereunder forfeited and at an end; provided, however, that if the Company shall begin within the period hereinbefore named and shall prosecute with diligence an action to determine whether the Company is in default, the Board shall not declare this grant and all of the rights and privileges of the Company hereunder forfeited and at an end until such action shall have been determined and the Company allowed thirty days from the date of such determination within which to remove such default; and when the [fol. 47] Board shall have so declared said rights and privi-

leges forfeited and at an end, they shall cease and the title of the Company to its property in the streets, alleys and public places shall pass to and vest in the City. Provided that no failure to exercise such forfeiture shall be a waiver of the right so to do at any other such time; and further provided that neither the provision for nor the imposition of, said penalty or any part thereof shall conclude the rights of the City or any customer to enforce the Company to comply, by appropriate proceedings, with any or all of the obligations hereby imposed upon, or assumed by it, or to enforce compensation for any failure by the Company to comply with such obligations.

* * * * * * *

Sec. 30. The right and privileges hereby granted shall continue for a period of twenty years from and after the date of the passage of this ordinance unless the same be sooner forfeited as herein provided.

Sec. 31. None of the rights or privileges granted by this franchise is an exclusive right or privilege, and the Board expressly reserves the right to grant like franchises, rights and privileges to other persons or corporations.

* * * * * * *

Sec. 34. The Board shall have the power to establish such reasonable ordinances, rules and regulations to carry into effect the provisions of this franchise as it may deem necessary, and to modify, alter and amend such ordinances, rules and regulations from time to time.

Sec. 35. The cost of conducting all hearings instituted by the City or by the Company before the Railroad Commission, court or other tribunal, to which both the City and Company are parties shall be paid equally by the City and the Company; but each shall pay all fees and expenses of all witnesses, experts and lawyers engaged or called by it.

* * * * * * *

[fol. 48] Sec. 37. In any proceeding in the Railroad Commission, Court, or other tribunal or before the City Commissioners under Section 7 of this Ordinance, where the

rates or regulations as provided for under the provisions hereof are being assaulted, or sought to be regulated by agreement under said Section 7 by the Company or the City, any customer, or group of customers of the Company may appear and become a party thereto, and before any hearing shall be instituted for a fixation of rates before the City Commissioners as provided in Section 7 notice of any proposal to change the rates and of any hearing thereof shall be first published for a period of not less than five days in the official newspaper of the City of Lexington.

Article II. The above franchise shall be sold at public auction at the Mayor's office, in the City of Lexington to the highest and best bidder. * * * The said franchise shall be sold by the Mayor within thirty days after this ordinance becomes effective and at twelve o'clock, noon. The exact date shall be fixed by the Mayor. Before making this sale, however, the Mayor shall advertise the time, terms and conditions thereof in the official newspaper of the City of Lexington, which advertisement shall be published at least ten days next prior to the day of sale, including the day of sale.

Article III. The Company shall file with the Board within ten days after the sale of this franchise a written acceptance thereof in a form acceptable to the Board.

Article IV. The successful bidder shall, within ten days after such sale is made, pay to the Mayor the amount of its bid as provided in Article VI, and shall also execute to the City a bond in the sum of twenty-five thousand dollars with surety to be approved by the Mayor as a guarantee of faithful compliance with the terms of the franchise.

* * * * * * *

Article VI. The Mayor shall not sell the franchise herein [fol. 49] directed to be sold for less than fifteen thousand ($15,000) dollars.

* * * * * * *

Article VIII. The Mayor shall report his acts hereunder to the Board of Commissioners and said Board shall have the right to reject any and all bids.

Article IX. By reason of the public health and safety an emergency is hereby declared and this ordinance shall take effect immediately after it is signed, recorded and published.

Introduced January 21, 1927, and remained on file one week for public inspection in its completed form.

Passed by unanimous vote of Board of Commissioners January 28, 1927.

Hogan Yancey, Mayor.

Attest:

J. F. Price, City Clerk.

Jan. 29, 1927.

[fol. 50] IN UNITED STATES DISTRICT COURT

MOTION FOR AN INTERLOCUTORY INJUNCTION AND FOR TEMPORARY RESTRAINING ORDER—Filed October 19, 1929

Comes the plaintiff, Central Kentucky Natural Gas Company, and states that it has filed its verified petition in the above entitled cause and thereon now moves the Honorable Judge of this Court as hereinafter set out.

1. The plaintiff moves the Court to grant herein an interlocutory injunction as follows, to-wit:

(a) Restraining and enjoining the defendants and each of them, and all other persons acting in concert with them or by their authority or otherwise, from any attempt to compel the plaintiff, its officers, agents and employees, to observe or put into force the rate for natural gas service prescribed in the order of the defendant Railroad Commission entered on the 9th day of October, 1929, and set out in full in the Bill of Complaint filed herein.

(b) Restraining and enjoining the defendants and each of them, and all other persons acting in concert with them, or by their authority or otherwise, from taking any steps or proceedings against the plaintiff, its officers, agents or employees, to enforce any penalties or other remedy for disregarding the rate prescribed by said order.

(c) That the defendants, Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission, be restrained and enjoined from distributing the impounded fund in the custody of John H. Carter to the consumers from whom the same was collected, and from requiring the plaintiff to file with said Commission any statement or exhibit of the names of such consumers and the time and amounts of their several contributions to said impounded funds.

[fol. 51] (d) Restraining and enjoining the defendants, Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission, from awarding to consumers of the plaintiff amounts heretofore paid by them in excess of forty-five cents (45¢) and from requiring the plaintiff to pay over to said Commission for distribution to consumers the amount collected by the plaintiff under its sixty cent (60¢) temporary rate, as set out in the Bill of Complaint, and retained by it in excess of forty-five cents (45¢).

2. To the end that the plaintiff's motion for an interlocutory injunction may be heard and disposed of as is provided by Section 266 of the Judicial Code, the plaintiff moves the Honorable Judge of this Court to call to his assistance for the purpose of hearing and determining the plaintiff's application and motion for such interlocutory injunction, two other judges, and to fix and set a day certain for the hearing of said motion in order that the plaintiff may give due notice thereof, as is required under the Provisions of said Section 266.

3. The plaintiff further moves the Honorable Judge of this Court that pending the hearing and determination of the plaintiff's aforesaid motion for an interlocutory injunction herein, to grant and issue a temporary restraining order herein, restraining and enjoining the defendants and each of them, and all persons acting in concert with them or by their authority or otherwise, as hereinbefore set out in plaintiff's motion for an interlocutory injunction, and until said motion for an interlocutory injunction shall be heard and determined; and in support of this motion for a temporary restraining order the plaintiff refers

to and relies upon and now presents to the Honorable Judge of this Court, its verified petition filed in this action.

D. L. Hazelrigg, Chester J. Gerkin, Allen, Botts & Duncan, Attorneys for Plaintiff.

[fol. 52] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Entered October 19, 1929

This day came the plaintiff, Central Kentucky Natural Gas Company, and filed its motion in the above entitled cause for an interlocutory injunction, and also filed its motion for a temporary restraining order; and the Court having read the verified Bill of Complaint filed in this action, and being of opinion that irreparable loss or damage would result to the plaintiff unless a temporary restraining order is granted herein as moved by said plaintiff and as prayed for in said Bill of Complaint, it is now ordered and adjudged that pending the hearing and determination of the plaintiff's aforesaid motion for an interlocutory injunction, that the defendants and each of them, and all persons acting in concert with them or by their authority or otherwise, be restrained and enjoined as hereinafter set out, to-wit:

1. That the defendants and each of them, and all other persons acting in concert with them or by their authority or otherwise, be restrained and enjoined from any attempt to compel the plaintiff, its officers, agents and employees, to observe or put into force the rate for natural gas service prescribed in the order of the defendant Railroad Commission entered on the 9th day of October, 1929, and as fully set out and pleaded in the Bill of Complaint filed herein.

2. That the defendants and each of them, and all other persons acting in concert with them or by their authority or otherwise, be restrained and enjoined from taking any [fol. 53] steps or proceedings against the plaintiff, its officers, agents or employees, to enforce any penalties or other remedy for disregarding the rate prescribed by said order.

3. That the defendants, Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission, be restrained

and enjoined from distributing the impounded fund in the custody of John H. Carter to the consumers from whom the same was collected, and from requiring the plaintiff to file with said Commission any statement or exhibit of the names of such consumers and the time and amounts of their several contributions to said impounded funds.

4. That the defendants, the Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission, be restrained and enjoined from awarding to consumers of the plaintiff amounts heretofore paid by them in excess of forty-five cents (45¢), and from requiring the plaintiff to pay over to said Commission for distribution to consumers the amount collected by the plaintiff under its sixty cent (60¢) temporary rate as set out in the Bill of Complaint, and retained by it in excess of forty-five cents (45¢).

5. As a condition to the granting and issuance or enforcement of this temporary restraining order, the plaintiff is required and ordered to execute bond, with good and sufficient surety, in the sum of $10,000, binding the plaintiff to pay all monies and costs which shall be adjudged against it in favor of the defendants, or any of them, in the event it shall be determined that this temporary restraining order should not have been granted and issued.

6. Thereupon came the plaintiff and executed bond as hereinbefore ordered and required, with The Fidelity & Deposit Company of Maryland as surety thereon, and said bond having been submitted to the Court it is approved.

[fol. 54] 7. This temporary restraining order shall continue in full force and effect until the plaintiff's aforesaid motion for an interlocutory injunction shall have been heard and determined.

Done at Lexington, Kentucky, this 19 day of October, 1929.

A. M. J. Cochran, Judge.

* * * * * * *

[fol. 55] IN UNITED STATES DISTRICT COURT

MOTION BY DEFENDANTS TO DISMISS THE BILL OF COMPLAINT—

Filed November 8, 1929

Come now the defendants, Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission, J. W. Cammack, Attorney General of the Commonwealth of Kentucky, City of Lexington, a municipal corporation, and S. B. Featherston, individually and as representing all other persons similarly situated, and respectfully move the Court to dismiss the bill of complaint herein, for the following reasons, to-wit:

I

Because the bill contains no statement of any grounds sufficient to sustain or invoke the jurisdiction of a Federal [fol. 56] Court, and because the court has no jurisdiction of the action nor of the subject-matter thereof.

II

Because the allegations of fact set forth in the bill are insufficient to constitute a valid cause of action in equity, and because of want of equity in the said bill.

Robt. H. Winn, D. C. Hunter, S. H. Brown, Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

ANSWER—Filed Nov. 14, 1929

The answer of the defendants, Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest and T. H. Lauhon, members constituting said Railroad Commission, J. W. Cammack, Attorney General of the Commonwealth of Kentucky, City of Lexington, a municipal corporation, and S. B. Featherston, individually and as representing all other persons similar- situated, and the joint and several

answer of the said defendants, to the bill of complaint herein.

Now come the aforesaid defendants and for answer to the bill say:

I

That this court has no jurisdiction of this action, nor of the subject-matter thereof, and that the bill contains no statement of any ground sufficient to sustain or invoke the jurisdiction of a Federal Court.

[fol. 57]

II

That the allegations of fact as set forth in the bill are insufficient to constitute a valid cause of action in equity, and that there is no equity or ground of equitable jurisdiction, or of equitable relief set up in the said bill.

III

That it is untrue and they deny that the action set up in the bill arises under the Constitution, or the laws of the United States, or particularly, or at all, under the Fourteenth Amendment to said Constitution, or that the rate prescribed in the order of the Railroad Commission of date October 9th, 1929, is unjust, or discriminatory, or confiscatory of plaintiff's property.

IV

That it is untrue and they deny that this suit involves the right of the plaintiff to have established or fixed for rate-making purposes the fair or reasonable value of its property devoted to public use, or the determination of a fair and reasonable return upon said value, or that said order does not properly or legally give consideration to the present value of plaintiff's property, or in accordance with competent evidence of such value presented to the Railroad Commission, or that any such evidence was presented, or is confiscatory of plaintiff's property used or useful in furnishing gas service to the public, or at all, or that said order deprived plaintiff of its property without due process of law, or denies plaintiff the equal protection of the laws in violation of plaintiff's alleged rights under the Fourteenth Amendment to the Constitution of the United

States, or is, therefore, null or void, or that said order is in violation of the rights of the plaintiff under Section 13 of the Constitution of the Commonwealth of Kentucky, or in that same would (or that same would) result in the taking of plaintiff's property without just compensation therefor.

[fol. 58] V

That it is untrue and they deny that the rate of 45 cents is less than a just and reasonable rate, or is confiscatory as alleged in said bill, or otherwise, or that the enforcement thereof against the plaintiff would be in violation of the plaintiff's rights under and as prescribed by the Fourteenth Amendment to the Constitution of the United States, or that said rate, or its enforcement, would deprive the plaintiff of its property without due process of law, or would constitute a denial to the plaintiff of equal protection of the law, or that said rate, or its enforcement would also be in violation of the plaintiff's rights under Section 13 of the Constitution of the State of Kentucky, or that said rate or its enforcement would deprive the plaintiff of its property without just compensation.

VI

That it is untrue and they deny that all of plaintiff's property is located in the State of Kentucky, or in the Eastern District thereof, or that the fair or reasonable value of the properties used or useful in furnishing gas service and owned by the plaintiff, or after making all or due allowance or deductions for existing depreciation in the physical property was not less than $5,610,829.00 as of December 31st, 1926, or is substantially or at all higher than said amount at the present time, or that the fair or reasonable value of the property leased by plaintiff, or owned by the Lexington Utilities Company, or used or useful in furnishing gas service to consumers in Lexington, or after making all or due or any allowances or deductions for depreciation in the physical property was not less than $730,069.00 on the date aforesaid, or substantially higher at the present time, or that the total or fair or reasonable value of the combined properties owned or leased by the plaintiff, or used or useful in furnishing said gas service, or after mak-

[fol. 59] ing all, or due, or any allowances or deductions for existing depreciation of the physical property was not less than $6,340,895.00 as of December 31st, 1926, or is substantially, or at all, higher than the said amount at the present time, or that the value of plaintiff's property used and useful in furnishing said gas service ever was or is in excess of $1,189,489.00, or that the fair or reasonable value of the property leased by the plaintiff from the Lexington Utilities Company, used or useful in furnishing said gas service ever has been or is in excess of $549,209.00, or that the entire property used or useful in said gas service may for convenience, or should be, divided into two classifications, physical or tangible, or intangible, or that the physical or tangible properties may, or should be divided into the production system, or the transmission system, or the distribution system, or general property, or general overheads, or undistributed construction' expenditures, or which are made up of organization costs, or construction overheads, or that which latter consists of engineering during construction, or legal expenses during construction, or administration during construction, or insurance, or damage during construction, or that none of same are included in the cost of labor or materials going into the plant, or are a part of the total cost of the constructed plant, or cost of financing, or which is the cost of the service for assembling the necessary capital to construct the plant, or working capital which is made up of materials or supplies, or which include materials or supplies necessary to have on hand in the operation of the Company, or cash necessary for carrying on the business, or that intangible properties may be or should be divided into going concern value, or the element of value, or property, or property in an assembled or established plant doing business or earning money upon which the owner has the right to make a fair return, or cost of obtaining new franchises, or which is the actual cost expended by the Company in procuring [fol. 60] its franchise under which it is permitted to operate within municipalities, or that the aforesaid alleged items, or the fair or reasonable value thereof, or which constitute the aforesaid entire or any combined or other properties of plaintiff or said Lexington Utilities Company, or used or useful in said gas service, or that portion properly allocated to the Lexington district, or used or useful in said

Lexington district, were as of December 31st, 1926, as set up in the bill in extenso in paragraph VII of the bill herein, or of any value in excess of those set up in paragraph — of this answer.

On the contrary defendants aver that said table or schedule of value, and each and every item thereof, as set up in paragraph VII of the bill is grossly overstated, padded, unreasonable, and unfair; and that since this rate proceeding began practically the entire capital stock of plaintiff Company (5995 out of 6000 shares) sold as an entity for a net price of $47.00 per share, equalling $2,820,000.00 (a too high price at that) for these exact same properties that plaintiff Company asserts in said tabulation to be of the value of $5,610,829.00!

Or that the business of mining for, or producing, or selling, or working, or distributing natural gas is one of exceptional, or any, hazard, or that the subject-matter of the investment therein is exhausted in its use within a comparatively short period of time, or that by reason thereof, or at all, the investment in, or the acquisition or development of, natural gas lands, or in the facilities for the transportation of natural gas to points of consumption must be amortized within the life of the producing fields from which natural gas is or may be obtained, or such necessity for amortization exists where the producing fields are owned by the distributing company, or are owned by other producers from whom gas is purchased by the distributing company for sale or distribution, or that a rate of return [fol. 61] upon the value of the property of such distributing company, or use or useful in the public service which fails or does not take into account the factors aforesaid, is unjust or unreasonable or confiscatory, or that under the rate of 45 cents for gas at Lexington plaintiff's earnings for the year 1926 would not have been in excess of $1,003,952.00 for its entire system, or *of* in excess of $598,777.00 for the Lexington district, or that its operating expenses for said year would have been as much as $767,235.00 for its entire system, or $448,655.00 for the Lexington District, or that the net earnings for said year, or after paying operating expenses, or without making any allowances whatsoever for taxes, would have been $236,715.00 for the entire system, or $150,122.00 for the Lexington district, or that said accounts would be insufficient for depletion or depre-

ciation or amortization or extraordinary maintenance, or a reasonable allowance for contingencies, either for the entire system or for the Lexington district, or for both, or would leave nothing for return on plaintiff's property used or useful in rendering said service, or either for the entire system, or for the Lexington district, or that under said 45 cent rate it would be compelled to furnish said gas service at an actual loss, or both, for its entire system, or for the Lexington district, or that same would be true for the year 1927, or the year 1928, or that under said 45 cent rate at Lexington the revenue- available for said purpose would have been less in 1927 or in 1928 than they were in 1926, as based on actual operations.

VII

That it is untrue and they deny that prior or subsequent to the purchase by plaintiff of its present franchise from the City of Lexington it was contended by the City of Lexington that in determining the rates or charges for service in Lexington the lease agreement with the Kentucky Util- [fol. 62] ities Company should be disregarded, or the rental paid thereunder omitted, or left out of consideration as an operating expense, or that the fair value of the property owned by the Lexington Utilities Company should be added to the fair value of the property owned by the plaintiff, or properly allocated to the City of Lexington for the purpose of arriving at or determining the total fair value of the property used or useful in rendering said service in Lexington, or that such total fair value should be adopted or considered as the rate basis upon which the plaintiff should be allowed a fair return, or that by reason of any such contention plaintiff caused to be made an inventory or valuation of the said property of the Lexington Utilities Company, or that the City of Lexington did the same for any such alleged reason, or for any reason other than plaintiff's own adoption of an allegiance to said method of treating the Lexington Utilities property.

That, upon the contrary, the defendants aver and state that there never was, and is not now, any reason whatsoever for treating the properties of the Lexington Utilities Company as a part of the properties of the plaintiff Com-

pany for rate base purposes; that never at any time, or anywhere in the entire record, did the defendants take any such position; but that the plaintiff Gas Company assumed for itself the said theory upon some chance query or reflection, in some conference about the matter, that the properties of the Lexington Utilities Company might be so treated; and that plaintiff Company seized upon said query and built up for itself this theory of joint capitalization of both companies, a theory which defendants have always repudiated as unsound and upon which they bottomed no single step in this entire proceeding.

That while it may be true that the Railroad Commission refused to state in its order, among many other useless [fol. 63] details asked by plaintiff, whether or not the properties of the Lexington Utilities Company, and other facts with reference thereto, were included in the rate base adopted by the Commission, the entire record makes perfectly patent that the Railroad Commission did not (as under the law it could not) embrace in its decision the properties of the Lexington Utilities Company (an arm's length contractor with the plaintiff company) as a part of the assets of the plaintiff Company.

That it is untrue and they deny that on any basis the plaintiff's net earnings available for a return on the fair value of its property under said 45 cent rate would be less than if the fair value of the property owned by the Lexington Utilities Company were included in the rate base on which plaintiff would be entitled to a fair return, or that it is at least, or at all, fair to its consumers at Lexington to include the fair value of said property owned by said Lexington Utilities Company with the plaintiff's property aforesaid as a part of the rate base on which the plaintiff is entitled to a fair return.

That the defendants, all the while denying that the properties of any other arm's length corporation, or person, having to do with the sale and distribution of gas in Lexington, should be included in the rate base, state and aver that plaintiff Company is buying gas which it is distributing in the City of Lexington from a corporation known as the Petroleum Exploration, to which it is paying for said gas, so supplied in very considerable quantities, 40 cents per thousand feet (as defendants are informed); that said contract price is more than three times what

natural gas is worth, and at which it may be purchased for plaintiff Company's use in its deliveries to the City of Lexington; and that if there be admitted as a part of the rate base assets the properties of the Lexington Utilities Company utilized in distribution, there should be brought into the matter as well the production assets of the Petro-
[fol. 64] leum Exploration, and its gas charged for as an annual expense at not exceeding 12½ cents per thousand feet, instead of the extravagant price of 40 cents per thousand at which said gas is being bought by plaintiff Company.

VIII

That it is untrue and they deny that after filing its first promulgated rates, plaintiff ascertained or determined that said rates would not yield to the plaintiff a fair return on the value of its property used or useful in said service, or that said schedule named in paragraph IX of the bill, is or would be equivalent to a flat rate of slightly in excess of 69 cents, or that any rates or charges less than said rates or charges would be confiscatory or would be in violation of the rights of the plaintiff under the Fourteenth Amendment to the Constitution of the United States, or in violation of the rights of the plaintiff under Section 13 of the Constitution of Kentucky, or that under said schedule of rates the net revenue which would be earned thereunder, or would be available for the purposes of depreciation, or depletion, or amortization, or extraordinary maintenance, or contingencies, or profit, would be insufficient for said purpose, or any of them, or would not produce revenues sufficient to yield to the plaintiff a fair return on the value of its property used or useful in said service, or that the rates or charges as set out in said schedule of rates would produce, when applied to any fairly estimated sales to customers of gas under the entire system, or in the City of Lexington, or the Lexington district, on any basis of past sales, or as adjusted to said schedule of rates, gross revenues for the entire system of $1,207,435.00, or any part of same, or for the Lexington district $747,995.00, or any part of said sum, or for operating expenses the sum of $917,-412.00 for the entire system, or any part of said sum, or $528,310.00 for the Lexington district, or any part of said

[fol. 65] sum, or net revenue available to cover profit, or depreciation, or depletion, or amortization, or extraordinary maintenance, or contingencies, the sum of $290,023.00, or any part of said sum for the entire system, or the sum of $219,685.00, or any part of said sum, for the Lexington district.

Defendants state that under the franchise-contract set up in the bill, and under Section 4B thereof, plaintiff Company had no right to file before the said Railroad Commission, or to insist upon, or to contend for, any other rates, charges or compensation than those which it in said section and sub-section agreed to file, and did file within said two days; and that further under no circumstances has the plaintiff any right to contend for any meter charge or monthly customer charge of 75 cents per month, or any sum whatsoever, in that and because that, under Section 4F of said franchise-contract it is specifically provided that the rates as ascertained and fixed under the proceedings therein named "shall not be increased by any other charge or device of any kind or description", and that the attempt to impose said meter charge is an attempt to impose such a charge or device, and is in direct contravention of plaintiff's contract undertaking.

That it is untrue and they deny that the plaintiff is either informed or believes that the defendant J. W. Cammack, now Attorney General of the Commonwealth of Kentucky, will, unless enjoined or inhibited, or at all, or otherwise, or that it is true that the defendant Cammack will undertake to enforce the order of the Railroad Commission, or to prosecute the plaintiff under the provisions of Section 201e-1 and following of the Kentucky Statutes, or at all.

Upon the contrary the defendant Cammack avers and states that he will abide by the order of the said Railroad Commission of date October 9th, and particularly will abide by the contract provision of the franchise set up with the bill, by which plaintiff Company has the right to collect, pending litigation, 60 cents per thousand for its gas sold [fol. 66] in Lexington, and that he, the defendant Cammack, specifically disclaims any purpose to take any legal steps whatsoever as against plaintiff Company with respect to said 45 cent rate as long as said contract provision is in force.

IX

That it is untrue and they deny that plaintiff is liable to indictment or penal action, or to any penalties, or to suits for damages, unless the Railroad Commission is restrained from filing information or recommending or requesting such indictment, or unless the defendant Cammack be enjoined from instituting or prosecuting any such penal action or criminal proceeding, or unless the defendant, or all, or any other persons, be enjoined or restrained from instituting any action or proceeding against the plaintiff under or by virtue of the order of said Railroad Commission fixing or ordering the said 45 cent rate for gas service at Lexington.

Upon the contrary the defendants state and aver that none of them intends, or threatens, or expects, to enforce, or to endeavor to enforce, said order, or to start any prosecutions, or procure any indictments or informations, or other legal proceedings thereunto as long as there is effective and in force that 60 cent contract rate set up in the next paragraph hereof.

X

That it is untrue and they deny that the order of October 9, 1929, is void or invalid, or that same is in excess of the powers of the defendant Commission, or that under Section 201e-14 of the Kentucky Statutes the Commission has no power or authority to suspend the particular charge fixed by said order, or that under the named sections of the Kentucky Statutes the said order would be, or become, effective, or is effective at the expiration of ten days from the [fol. 67] entry of said order, or in any event at the expiration of thirty days from said date, or that the plaintiff will then be or become subject to prosecution, or fine, or to further proceedings by said Commission for the enforcement of said order or to a multitude, or any action for damages or awards, unless the defendants are enjoined or restrained therefrom, or at all.

That the practice followed by the Railroad Commission of Kentucky in the entry of said order of October 9th was and is in exact conformity to the agreement and engagement of the plaintiff Company and the defendant City of

Lexington, as in the following way and in the following manner, to-wit:

(a) That said franchise contract filed with the bill herein provides, in Section 4(B) thereof that within two days after the franchise became effective plaintiff Company should file a copy thereof with the defendant, the Railroad Commission of Kentucky.

(b) That as a matter of fact and in compliance with its said engagement plaintiff Company did, as within said two days, file said franchise contract as a basis and as a part of its complaint, before the Railroad Commission of Kentucky, which is that same complaint out of which resulted the order of October 9th, 1929, made by said Commission fixing said rate at 45 cents; and that in paragraph VI of the bill herein plaintiff Company specifically sets out that it did so file said contract; and it specifically pleads in the said numbered section (as was the exact truth) that it, the plaintiff, instituted the said proceeding before the Railroad Commission directly under the terms of, and as is set out in, the said contract should be done.

(c) That said contract further provided, in Section 4(D) thereof, that as within said two days the plaintiff Company should file its schedule of rates before said Railroad Commission; that the defendant City if dissatisfied therewith should plead before the Commission, assaulting the said rates; that it did so plead (all as is set up in the bill herein), [fol. 68] and that upon a hearing to be conducted thereon the plaintiff Company should assume the burden of proving that its rates and charges so filed were just and reasonable.

(d) That said franchise contract further provided in Section 4(E) thereof that pending the determination of said controversy and the fixing of just and reasonable rates "by said Railroad Commission and including any subsequent proceedings in court," the Company should have the right to charge and collect for its gas 60 cents per one thousand feet, and down and until "the final fixation of just and reasonable rates," all as is set up under paragraph XII of the bill herein.

(e) That the defendants, both the City of Lexington, the said Railroad Commission and its members, have at all

times conducted said hearing and proceeding, and that defendant Railroad Commission's order of October 9th, 1929, was in exact accord with the terms of said franchise contract, and that particularly the withholding of the application of said 45 cent rate as provided in said order, pending the court proceeding named in said franchise contract, was and is in exact accord with the terms of said franchise contract; and that by reason of said facts, and by reason of plaintiff Company's engagement and agreement to collect and be satisfied with 60 cents per thousand feet pending the final fixation of rates as provided in said contract, plaintiff Company is now estopped to question in any way the said agreed procedure and the said order of the said Railroad Commission so postponing the application of said rate as in exact accord with the spirit and terms of plaintiff Company's own contract, the which estoppel these defendants specifically plead and rely upon in bar of the prosecution of this action.

Defendants, and each and all of them, further aver and state, and now by their pleading here bind themselves to, and agree that they will in all respects, be held and bound [fol. 69] by the said 60 cent pendente lite agreed rate, and that they expect to, and will, take no step of any nature or kind to evade or avoid the said agreement, or to put into application the 45 cent rate named in the said order of the Railroad Commission of October 9th, 1929, as long as the said matter is under litigation, as is provided in said franchise contract; and that defendants, and each and all of them, aver and state that they are not the subject of injunction, and should not be enjoined from doing that thing or those things which each and all of them distinctly aver their purpose not to do.

XI

That it is untrue and they deny that unless restrained by the order of the court the Commission will make any awards, or will order the plaintiff to pay over to the Commission for distribution the amount collected by it in excess of said 45 cent rate, or to the irreparable injury or damage of the plaintiff, or at all, or that it was the purpose or intent of the contract provision in said franchise covering the impounded funds that the detailed statement therein named should be

filed only upon the final fixation of rates by the Railroad Commission, or including any subsequent proceedings in court, or that in violation of the true meaning of the said ordinance the Commission has arbitrarily ordered or directed the plaintiff to file a full and detailed statement and exhibit of the names of each and all customers who have contributed to said funds, together with the times and amounts of making their contributions thereto, or that the cost of preparing or making such detailed statement or exhibit, will not be less than $10,000.00, or that if plaintiff had kept the faith of its contract or agreement by keeping suitable records thereunto the cost should be otherwise than nominal, or that such expense is premature or unnecessary, or that such expense will never be necessary, or that under just or reasonable rates or charges for its said gas service said entire, or any part of said impounded fund should be ordered to be paid to the plaintiff, or belongs to the plaintiff, [fol. 70] or that it will never become necessary for plaintiff to prepare or file such statement, or that unless restrained by the orders of this court the Commission will undertake to enforce the said order of the impounded funds to the irreparable injury, or any damage of the plaintiff, or under the violation of its rights under the Constitution of the United States or under the Constitution of Kentucky.

That, upon the contrary, by said franchise contract and in Section 4 (E) thereof plaintiff Company agreed that it would "keep an accurate record of all sums paid in by all and any of its customers * * * and the Company on demand from the City, if so ordered by said Railroad Commission * * * shall file with said Railroad Commission * * * a full and detailed statement of the amounts, times and sums contributed by each customer to said funds"; that the order directing said statement to be filed was entered by said Railroad Commission at the time when under said franchise contract there could be no further impoundment of said funds with it, was entered upon demand from the defendant City, and was made for the purpose of providing a record upon which this Commission might distribute the said funds as and when, and if ever, distribution of all, or parts thereof might become necessary as under the terms of said franchise contract; and that the plaintiff Company specifically engaged and agreed to do as to said statement that

precise thing which it now seeks by injunction to prohibit its being compelled to do.

XII

That it is untrue and it denies that the ordering of the 45 cent rate without setting out in its order the value of plaintiff's property was arbitrary or in violation of the legal duties of said Commission, or of the rights of the plaintiff, or that by reason thereof the said order is void.

XIII

That it is untrue and they deny that a service charge of 75 cents or any sum, is reasonable or necessary in order to [fol. 71] avoid discriminatory rates, or that there are any consumers in Lexington who do not or would not consume, or pay for, enough gas to reimburse the plaintiff for the actual cost of rendering said service, or that under said flat rate of 45 cents the plaintiff would be compelled to furnish its gas service to more than forty, or any, percent of the entire number of its consumers in Lexington, or the Lexington district, at less than the actual cost of furnishing said service, or that by reason thereof the plaintiff would be deprived of its property without due process of law, or without just compensation, or in violation of any of its rights, or to the irreparable, or any injury or damage of the plaintiff, or that plaintiff has no plain or speedy or adequate remedy at law.

Upon the contrary defendants aver and state that plaintiff Company agreed in said franchise contract, and in Section 4(F) thereof, that it would not impose any meter charge during the terms of said contract.

Wherefore, having answered, the defendants jointly and severally pray:

(a) That it be determined that this Honorable Court be and is without jurisdiction of both or either the parties or the subject matter of this action.

(b) That the bill of complaint herein be dismissed for want of equity therein, and that the said bill be adjudged insufficient in fact to constitute a valid cause of action in equity.

(c) That said bill be dismissed; that the parties defendant may go hence without a day; and that they may have any and all and further relief to equity and good conscience belonging.

(d) That they have and recover of plaintiff their costs herein incurred.

Robt. H. Winn, D. C. Hunter, Attorneys for Defendants. J. W. Cammack, for Himself and for Defendant Railroad Commission and Moses R. Glenn, Oscar Vest and T. H. Lauhon, as Members Thereof.

[fol. 72] *Duly sworn to by James J. O'Brien and J. W. Cammack. Jurats omitted in printing.*

[fol. 73] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION FOR INTERLOCUTORY INJUNCTION—Filed December 7, 1929

To His Excellency Flem D. Sampson, Governor of the Commonwealth of Kentucky, and the Honorable James W. Cammack, Attorney General of the Commonwealth of Kentucky;

In conformity with Section 266 of the United States Judicial Code you are hereby notified that the plaintiff in the above styled cause will on December 7th, at 10 o'clock A. M., in the chambers of the United States District Court for the Eastern District of Kentucky, at Lexington, Ky., move said Court for an interlocutory injunction.

Henry T. Duncan, D. L. Hazelrigg, Attorneys for Plaintiff.

The above notice is accepted this 2nd day of December, 1929.

F. D. Sampson, Governor of the Com. of Ky. J. W. Cammack, Atty. Genl. of the Com. of Ky.

IN UNITED STATES DISTRICT COURT

AMENDED BILL OF COMPLAINT—Filed December 7, 1929

Comes the plaintiff, Central Kentucky Natural Gas Company, and, with leave of Court, files this its Amended Bill of Complaint, and amends its original Bill of Complaint as hereinafter set out:

[fol. 74] I

The plaintiff, amending Paragraph III and Paragraph VI of its Original Bill of Complaint, states that the said forty-five cent (45¢) rate ordered and entered by said defendants as set out in the Bill of Complaint was capricious, arbitrary and without any evidence, and without sufficient evidence to support the same, and by reason thereof the order of said Railroad Commission ordering said forty-five cent (45¢) rate is void and constitutes a denial to the plaintiff of equal protection of the law and of due process of law under the 14th Amendment to the Constitution of the United States.

The Plaintiff in proof and support of its allegations hereinbefore set out, files herewith a complete copy of the record and evidence and exhibits as made before said Railroad Commission and as hereinafter particularly described, which said exhibits are a true and complete copy of said record except as hereinafter set out, to-wit:

Exhibit "A", consisting of Volume 1 of the Transcript of Evidence and all of the Exhibits referred to therein and specifically enumerated in the index to said Volume.

Exhibit "B", consisting of Volume II of said Transcript of Evidence, together with all of the Exhibits therein mentioned and specifically enumerated in the index thereto.

Exhibit "C", consisting of Volumes III and IV of the Transcript of Evidence, together with all of the Exhibits therein mentioned and specifically enumerated in the index to each of said Volumes.

Exhibit "D", consisting of Volume V of the Transcript of Evidence, together with all of the Exhibits therein mentioned and specifically enumerated in the index to said Volume.

[fol. 75] Exhibit "E", consisting of Volume VI of the Transcript of Evidence, together with all of the Exhibits therein mentioned and specifically enumerated in the index to said Volume.

Exhibit "F", consisting of Volume VII of the Transcript of Evidence, together with all of the Exhibits therein mentioned and specifically enumerated in the index to said Volume, and also Volume VIII covering other and the final proceedings had before said Commission.

The plaintiff further says that the aforesaid Exhibits do not include a transcript of the pleadings filed with said Railroad Commission in said rate controversy, but that plaintiff will cause to be made a duly certified copy thereof and will hereafter file the same herein as a part hereof. The plaintiff makes each and all of the aforesaid Exhibits a part hereof the same as if fully set out herein.

II

The plaintiff for further cause of action against the defendants says that under Section 4 (A) of said franchise ordinance and contract the plaintiff acquired and has the right to charge, demand, collect and receive for its gas service just and reasonable rates, charges or compensation. Plaintiff says that the rates promulgated by it and specifically set out by the plaintiff in Paragraph IX of its Bill of Complaint herein do not exceed and are in fact less than just and reasonable rates and charges and are rates and charges which the plaintiff has a right under its said contract to charge, receive and collect. Plaintiff says that the said forty-five cent (45¢) rate fixed and ordered by said Railroad Commission and the members thereof, defendants herein, constitutes an impairment of the plaintiff's contract right as hereinbefore set out and is in violation of the plaintiff's right secured and protected to it under Section 10, Article I of the Constitution of the United States, wherein it is provided that no state shall pass any law impairing the obligation of contracts, and by reason thereof [fol. 76] the said rate so fixed and ordered by said Railroad Commission is void.

Wherefore plaintiff prays as in its original Bill of Complaint; and further, that said rate and order so fixed and

entered by said Railroad Commission be adjudged void and in violation of the plaintiff's rights secured to it under the Constitution of the United States, as set out in said original Bill of Complaint, and as set out in this its Amended Bill of Complaint; and further, that the Court order and adjudge that the aforesaid rates promulgated by the plaintiff are just and reasonable rates under the terms of said franchise contract; and further, that the defendants, and each of them, be enjoined from entering any order changing or interfering with or modifying said rates promulgated by the plaintiff as aforesaid.

D. L. Hazelrigg, Chester J. Gerkin, L. K. Langdon,
Ernst, Cassett & Cottle, Allen, Botts & Duncan.

[fol. 77] IN UNITED STATES DISTRICT COURT

Before Moorman and Hickenlooper, Circuit Judges, and Dawson, District Judge

OPINION—Filed January 29, 1930

Per CURIAM:

The plaintiff, a Kentucky corporation, is engaged in the sale and distribution of natural gas in the City of Lexington, Kentucky, under a franchise granted to it by the city on February 25, 1927, under the provisions of Sections 163 and 164 of the Constitution of Kentucky. While the franchise goes into much detail as to the duties and obligations of the plaintiff in distributing and selling natural gas to consumers, it does not fix the rate to be charged for such service. Lexington, under the law of Kentucky, is a city of the second class. Charters of cities of the second class confer upon such cities no power to regulate the rates to be charged by public utilities furnishing service to their inhabitants. Chapter 61 of the Acts of the General Assembly of 1920 (now Sections 201e-1-26, Kentucky Statutes, Carroll's 1922 Edition) confers that power upon the Railroad Commission of Kentucky.

Section 4 of the franchise deals with the question of the rates to be charged by the plaintiff under its franchise. That section reads as follows:

"Sec. 4. (A) The Company shall have the right to charge, demand, collect and receive for its gas service just and reasonable rates, charges or compensation.

(B) The Company shall, within two (2) days after the effective date of the franchise contract promulgate in writing the rates, charges and compensation which it may deem to be just and reasonable and which it proposes to charge for its gas service, and shall on said day file a copy thereof with the Mayor of the City of Lexington and shall also, on said day, file a copy thereof, and a copy of this Ordinance [fol. 78] with the Railroad Commission for the State of Kentucky.

(C) The Board hereby declares that any rate in excess of forty cents ($.40) per one thousand (1,000) cubic feet of gas would be in excess of a just and reasonable rate for such gas service, but this declaration shall not be binding on the Company, nor shall anything herein contained ever restrict the City from contending for a lower, nor the Company from contending for a higher, nor the Railroad Commission of the State of Kentucky or other tribunal in the exercise of a lawful jurisdiction, nor any court in the exercise of its jurisdiction, from fixing a lower or higher rate than forty cents ($.40) per one thousand (1,000) cubic feet of gas.

(D) In the event the rates and charges promulgated and filed by the Company as aforesaid, shall, in the opinion of the City, be in excess of just and reasonable rates and charges than the City shall proceed before the Railroad Commission as provided in Sections 201c-1 to 201c-20 of the Kenfucky Statutes, and in such proceeding the Company shall assume the burden of proving that the rates and charges promulgated by it as aforesaid, are just and reasonable.

(E) Pending the final determination of such controversy and the fixing of just and reasonable rates and charges by said Railroad Commission and including any subsequent proceedings in court, the Company shall have the right to charge, receive and collect as temporary rates and charges not to exceed fifty cents ($.50) per one thousand (1,000) cubic feet of gas until the Company is furnishing gas through a pipe line of sufficient capacity, or (should the

purchaser hereof already have that ten inch line named in Section 23) then through two pipe lines, as provided in Section 23 of this ordinance, and after it is furnishing gas through a pipe line of sufficient capacity, or (should the purchaser hereof already have that ten inch line named in Section 23), then through two pipe lines as aforesaid, not to exceed sixty cents ($.60) per one thousand (1,000) cubic feet of gas; but provided that of the amount collected under such temporary rates the Company shall under the direction and control of said Railroad Commission, or of the court, impound ten cents ($.10) per one thousand (1,000) cubic feet until the final fixation of just and reasonable rates and charges as aforesaid. Upon final determination of just and reasonable rates and charges as aforesaid, the sums so impounded together with all interest accumulations thereon shall be distributed under the order of said [fol. 79] Commission, or court to the Company, or to its several customers, or in part to each, as the final determination may direct. If the Company during any part of the time prior to said final determination shall have collected sums including or other than those impounded, in excess of the rates and charges as finally determined, it shall then and thereupon repay said excess sums to the several customers who may have made such payments. The Company shall give to each customer a receipt for the amount paid by him pending the final determination of said suit or proceeding. It shall also keep an accurate record of all sums paid in by all and any of its customers under temporary rates and said records shall at all times be open to the City and to any customer as to his own contributions thereto; and the Company on demand from the City, if so ordered by said Railroad Commission, or other tribunal, or court, shall file with said Railroad Commission, or court, where said proceeding or suit may be pending, a full and detailed statement of the amounts, times and sums contributed by each customer to said funds. In addition to said temporary rates hereinabove provided for, the Company shall have the right to charge three cents ($.03) per one thousand (1,000) cubic feet, if the bill for service is not paid within ten (10) days after said bill is mailed or delivered to the customer.

(F) The rates, charges or compensation to be charged, demanded and collected by the Company as herein provided

shall be the total rates, charges and compensation charged, demanded and collected by the Company and they shall not be increased by any other charge or device of any kind or description. The rates, charges and compensation finally fixed and determined as provided in Sub-section (D) hereof shall continue in effect until modified, altered or changed under and pursuant to the provisions of the franchise, as hereinafter provided."

The bill discloses that in compliance with Section 4 (B) the plaintiff, within two days after the effective date of its franchise, promulgated in writing the rates proposed to be charged by it in rendering the service contemplated in the franchise, and that, as provided in Section 4 (D) of the franchise, the City of Lexington and S. B. Featherstone, an interested citizen, for himself and other consumers, filed [fol. 80] a complaint with the Railroad Commission, attacking the rates published by the plaintiff as excessive and extortionate, and asking that Commission to fix just and reasonable rates to be charged by the plaintiff. After notice to the plaintiff, a hearing was had, and on October 9, 1929, the Commission entered an order holding that the rates proposed to be charged by the plaintiff were unreasonable and extortionate and fixing forty-five cents (45¢) per one thousand (1,000) cubic feet, with an additional charge of three cents (3¢) per one thousand (1,000) cubic feet for overdue bills, as the lawful rate to be charged by the plaintiff. The order further provides that the rate thus fixed should be effective from January 28, 1927, which date is declared by the order to be the effective date of the franchise.

The fourth and fifth paragraphs of the Commission's order are as follows:

"Fourth. That the Central Kentucky Natural Gas Company filed herein, at the inception of this hearing and controversy, a copy of its ordinance-franchise whereunder it is operating in the City of Lexington; that said franchise-contract made certain stipulations and provisions about the fixation of rates under it, and that the Commission had conformed its procedure as near as might be to the agreements of the said franchise-contract. That it is provided in Section 4 (E) of said franchise-contract that pending

the final determination of just and reasonable rates and charges by this Commission and including any subsequent proceedings in Court, the defendant Company shall have the right to charge not to exceed sixty (60) cents per thousand cubic feet for its gas; and that in order to afford either side hereto the right, if it be so desired, to proceed in the courts with respect to such fixation of rates, the application of the forty-five cent rate hereby fixed is suspended for a period of thirty (30) days from the entry of this order; that if within said thirty day period either side shall have filed such proceeding in court, then the application of the forty-five cent rate hereby fixed shall be suspended until there be a final fixation in court of said rates, and subject to such modification, if any, of said rate as may [fol. 81] be fixed by said Court or Courts; but that if no such proceeding be filed in said time, then the said forty-five cent rate shall at once be put into force and effect.

That it be specifically recited and reserved, however, that no such suspension of the application of said forty-five cent rate shall affect the fact that it, or it as modified by the Courts, shall be effective from said 28th day of January, 1927.

Fifth. That as appears of record herein there have been impounded under the control and orders of the Commission, as provided in Section 4 (E) of said franchise, considerable sums of money out of the collections made by defendant Company as under the temporary rates by said section provided, which sums of money are to be distributed as under the orders of the Commission and as under the orders of the courts to which this controversy may be taken by the parties thereto. In consideration thereof it is ordered:

(a) That John H. Carter as Special Receiver do file within thirty days from this date a full report of all sums received by him, the dates of his such receipts, the expenses and allowances incident thereto, how said funds are now held and invested, and the net amount thereof in his hands as such Receiver.

(b) That upon motion of plaintiff said defendant company is ordered, within thirty days from this date, to file

with this Commission a full and detailed statement and exhibit of the names of each and all customers who have contributed to said funds, and the times and amounts of their several contributions thereto.

(c) That if there be instituted as within thirty days named in section four hereof, by either party, any suit to further try the rate controversy which is the subject of this proceeding, that the said impounded funds be retained in the custody and control of this commission, and not distributed until said Court proceedings have been fully determined; but that if said proceeding be not instituted in said thirty days, that this Commission will proceed to the distribution of said funds as may be proper in the premises.

That it be specifically reserved and recited, however, that nothing herein shall affect the right and obligation of the Commission to finally pay out said funds as under its [fol. 82] fixation of rates herein made, or as same may be modified by the courts, and as is provided in said franchise-contract."

The bill alleges that the rates fixed are confiscatory, and that therefore the order deprives the plaintiff of its property without due process of law, and contains allegations appropriate to invoke the powers of a court of equity. The prayer of the bill is that the rates fixed by the Commission be decreed to be confiscatory and in violation of the 14th Amendment to the Constitution of the United States; that the defendants be temporarily and permanently enjoined from enforcing or attempting to enforce such rates; that the Commission be temporarily and permanently enjoined from distributing the impounded funds referred to in the ordinance and in the order; that the Commission be enjoined from requiring the filing of the report directed to be filed in the fifth parargaph of the Commission's order, and that the Commission be enjoined from making reparation awards.

The case is now before us on motion for a temporary injunction, under Section 266 of the Judicial Code. The defendants have filed answer, putting in issue all the material allegations of the bill and specifically attacking

the jurisdiction of this court, and also attacking the bill because of want of equity therein.

The defendants' contention, that this cause is not within the jurisdiction of a Federal Court, is asserted from so many different angles, and the claims so overlap each other, that it is difficult to take hold of the real nub of their contention. Boiled down, it seems to be defendants' contention that in a rate controversy where there is no diversity of citizenship and no other federal question is made in the bill than the claim that the rate fixed by the rate-making body is confiscatory and deprives the plaintiff of his property without due process of law, the Federal District [fol. 83] Courts are without jurisdiction over the controversy, if the State statute under which the rate was fixed permits a judicial review in the State Courts on the question of confiscation or if the order, as in this case, suspends its operation pending judicial review, provided such review is sought within the time fixed by the order. It seems quite clear to us that the defendants have confused the question of jurisdiction with the question of the merits of the case. It is well settled that a complaint setting forth a substantial claim of a federal right, either under a federal statute or under the federal constitution, presents a case within the jurisdiction of the Federal Court, if the matter has reached the justiciable stage and if the jurisdictional amount is involved; and this is true, no matter how the court may ultimately decide the claimed federal right.

In the case of Binderup v. Pathe Exchange, 263 U. S. 291, the Supreme Court of the United States used this language in discussing the question of federal jurisdiction based upon an asserted federal right:

"Jurisdiction is the power to decide a justiciable controversy and includes questions of law as well as of fact. A complaint setting forth a substantial claim under a federal statute presents a case within the jurisdiction of the court, as a federal court; and this jurisdiction can not be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged any more than upon the way it may decide as to the legal sufficiency of the facts proven. Its decision either way upon either question is predicated upon the existence of jurisdiction, not upon the absence of it. Jurisdiction, as dis-

tinguished from merits is wanting only where the claim set forth in the complaint is so unsubstantial as to be frivolous, or, in other words, is plainly without color of merit."

[fol. 84] See also: Columbus Railway & Power Co. v. Columbus, 249 U. S. 399; Weiland v. Pioneer Irrigation Co., 259 U. S. 498; Newburyport Water Co. v. Newburyport, 193 U. S. 561; Matters v. Ryan, 249 U. S. 375; Flanders v. Coleman, 250 U. S. 223; Lovell v. Newman & Son, 227 U. S. 412; Louie v. United States, 254 U. S. 548; Hart v. Keith Exchange, 262 U. S. 271; The Fair v. Kohler Die Co., 228 U. S. 22; Siler v. L. & N. R. R., 213 U. S. 175; Nathan v. Rock Springs Distilling Co. (6th Cir.), 10 Fed. (2d.) 268.

Measured by the rule laid down and recognized in the foregoing, as well as in numerous other cases, the bill in this case is undoubtedly sufficient to invoke the jurisdiction of this court as a Federal Court. We shall therefore examine the defendants' contention that this court is without jurisdiction as though it were a motion to dismiss the bill on the ground that as a matter of law there has been no denial of due process in this case, inasmuch as the question of confiscation can be examined in the State Courts and as the order, by its terms, suspends its operation pending court review, provided same is taken within thirty days.

Neither Section 201e-1-26 of Kentucky Statutes, under which the Railroad Commission finds its authority for regulating the rates of the plaintiff, nor any other statute of Kentucky, provides for an appeal to the courts of the State by a utility company dissatisfied with the rates fixed by the Commission. The statutes of the State do not specifically provide for a proceeding in equity, in which the rates thus fixed may be attacked as being confiscatory, but that such right exists was recognized by the Court of Appeals of Kentucky in the case of Louisville & Nashville Railroad Co. v. Greenbrier Distillery Co., 170 Ky. 775. On the other hand, the statute under which the Commission [fol. 85] proceeded to fix plaintiff's rates does not attempt to deny the right of a utility company, in an appropriate proceeding, to have a court of competent jurisdiction try out the question of confiscation and exercise its own independent judgment as to the law and facts. Therefore, the statute under which the Railroad Commission proceeded

does not of itself deny due process of law, as was true in the case of Ohio Valley Co. v. Ven Avon Borough, 253 U. S. 287; Chicago, Milwaukee & St. Paul R. R. Co. v. Minnesota, 134 U. S. 418; Ohio Utilities Co. v. Public Utilities Commission of Ohio, 267 U. S. 359; Missouri Pacific Ry. Co. v. Tucker, 230 U. S. 340; Oklahoma Operating Co. v. Love, 252 U. S. 331.

The fact, however, that a State rate-fixing statute does not by its terms deny due process of law, by no means results in closing the door to a judicial inquiry as to whether or not a rate fixed by a rate-making body under the statute amounts to confiscation and denial of due process under the 14th Amendment. The statute may be valid when measured by the 14th Amendment, and yet the action of the rate-making body in fixing the rate complained of may be invalid under the Amendment. In such a case the moment the legislative act of fixing the rate has been completed and the rate-making body has the power and is under the duty to enforce the rate, unless restrained by court proceedings, the justiciable stage is reached, and irrespective of diversity of citizenship, the complaining utility, under Section 24 of the Judicial Code, may seek the protection of a Federal Court, even though the State law affords a like procedure in the State Courts. In either jurisdiction exactly the same question would be involved, viz: Is the rate so low as to be confiscatory, thereby resulting in depriving the plaintiff of his property without due [fol. 86] process of law? If the complaining party pursues the State remedy and the State Court, under the State law, is authorized to and does exercise its independent judgment on both the law and facts as to the question of confiscation and decides against the plaintiff, that is the end of the matter and the case is res judicata, unless on error to the Supreme Court it should be determined that the State Court acted arbitrarily or proceeded upon some fundamental error of law. But, as the question involved is a federal one, the plaintiff could have pursued his remedy in the first instance in the Federal Court. The State Court procedure provided by the State law is simply an alternative elective remedy. Railroad & Warehouse Commission of Minnesota v. Duluth Street Ry. Co., 273 U. S. 625; Reagan v. Farmers Loan & Trust Co., 154 U. S. 362; Pacific Telephone & Telegraph Co. v. Kuykendall, 265 U. S. 196;

Bacon v. Rutland Railroad Co., 232 U. S. 134; Oklahoma Gas Light Co. v. Russell, 261 U. S. 290; Prendergast v. New York Telephone Co., 262 U. S. 43; Detroit & Mackinac Railroad Co. v. Michigan Railroad Commission, 203 Fed. 86; Detroit & Mackinac Railroad Co. v. Michigan Railroad Commission, 235 U. S. 402; Monroe Gas Light & Fuel Co. v. Michigan Public Utilities Commission, 292 Fed. 139; Van Wert Gas Light Co. v. Public Utilities Commission, 299 Fed. 670; Union Light Heat & Power Co. v. Railroad Commission, 17 Fed. (2d) 143.

The defendants have entirely overlooked the fact that the Supreme Court cases referred to in Judge Cochran's opinion in the case of Central Kentucky Natural Gas Co. v. Mt. Sterling, 32 Fed. (2d) 338, and other cases of a similar character, were either dealing with the question of the constitutionality of statutes when measured by the 14th Amendment, or with the question of whether or not a particular State Court procedure which had been followed by the complaining party had denied due process, and the [fol. 87] court in that case apparently fell into the same error. None of these cases is authority in support of defendants' contention that when the State law permits a judicial review of a rate fixed by a rate-making body, that fact, as a matter of law, is such due process as to deny a Federal Court the power to hear and determine the question of confiscation in a suit brought in such court upon completion of the rate-making act.

Defendants point to the fourth paragraph of the Railroad Commission's order in support of their contention that the order fixing the forty-five cent rate does not amount to a taking of plaintiff's property without due process of law. This contention is based on the provision in that paragraph of the order suspending the forty-five cent rate for a period of thirty days after the entry of the order, and, if a proceeding is instituted in court within that time, for such additional time as the matter is pending in court. It is argued that as the operation of the order is thus suspended pending a judicial determination of the question of confiscation, there has been and can be no taking without due process. The trouble with this contention is that the defendants entirely ignore the plight the plaintiff found itself in upon entry of the order complained. Plaintiff was then faced with the necessity of making a de-

cision as to whether it should or should not resist the order in a judicial proceeding. If it did not resist, then by the terms of the order it became operative at the end of thirty days. So from the very date of its entry the Railroad Commission was under the duty of enforcing the order at the end of thirty days, if court proceedings had not been instituted; and by the express language of the order itself, the Commission was threatening so to do.

It must not be forgotten that the prohibitions contained in the 14th Amendment apply to each of the three branches of the State government. As pointed out in the case of Chicago, Burlington & Quincy R. R. Co. v. Chicago, 166 U. S. 226, 233:

[fol. 88] "The prohibitions of the amendment refer to all the instrumentalities of the State—to its legislative, executive and judicial authorities, and therefore whoever by virtue of public position under a State government deprives another of any right protected by that amendment against deprivation by the State violates the constitutional inhibition; and as he acts in the name and for the State and is clothed with the State's power, his act is that of the State."

Therefore, if the rate fixed by the Commission is confiscatory, and its observance had been enforced by the Commission, such enforcement would have resulted in depriving the plaintiff of its property without due process of law, irrespective of the fact that the plaintiff might have appealed to a State Court for judicial determination of the question of confiscation. If, then, its enforcement by the Railroad Commission would deprive the plaintiff of its property without due process of law, undoubtedly such threatened enforcement justified a resort to a court of equity to prevent such confiscation, provided the other necessary grounds for equitable jurisdiction exist. Such a suit would present solely a controversy arising under the Constitution of the United States, of which District Courts are given jurisdiction under Section 24 of the Judicial Code.

It is rather hesitatingly suggested by the defendants that the action of the Railroad Commission complained of can not be considered as a denial by the State of due process, for the reason that the Railroad Commission, by virtue of the agreement set forth in Section 4 of the franchise ordi-

nance, acted as arbitrators chosen by the parties to fix the rate, and not as a State agency vested by law with the power to fix plaintiff's rates. A most superficial reading of the franchise, however, discloses the fallacy of this contention. The provisions found in Section 4 of the ordinance are the very anthithesis of an arbitration agreement. Instead of indicating an intention to be bound by the action of the [fol. 89] Railroad Commission, as would have been the case in an arbitration agreement, there is specifically reserved to each party the right to resort to the courts to test the legality of the rate fixed. At most, the franchise simply expresses the agreement of the parties that the rate to be charged may be fixed and determined in the manner provided by State law. Such an agreement can not be twisted into an undertaking on the part of the plaintiff to abide by the action of the Commission, if it conceives its federal constitutional rights to be violated by the order, nor into an agreement to seek redress for such wrong, if any, in the State courts. See Railroad & Warehouse Commission of Minnesota v. Duluth Street Ry. Co., supra.

We must hold, therefore, that this court has jurisdiction of the controversy, and that the mere fact that the State Courts are open to the plaintiff to have judicially determined the question of confiscation does not prevent the order of the Railroad Commission and its threatened enforcement from being violative of the 14th Amendment, if, in fact, the rate fixed is confiscatory.

Defendants contend, perhaps not strenuously, that there is no equity in the bill. The allegations therein as to the penalties which might have been inflicted, had the plaintiff disregarded the order fixing the rates and taken no steps to enjoin its enforcement, and the danger of numerous suits by customers for overcharges had no such steps been taken, are sufficient to support equitable jurisdiction.

In view of the conclusions herein announced, it becomes our duty to hear and determine de novo the questions of fact and law as to whether or not the rate complained of is confiscatory. In such a hearing we are not confined to [fol. 90] the testimony heard before the Commission, as we probably would be had the Commission's order been attacked solely on the ground that it was arbitrary and capricious. Of course, we are not to be understood as

holding that the parties may not, by agreement, try the case before us upon the same evidence heard by the Commission. The conclusions herein announced, however, do not require that the temporary injunction sought shall be granted to the full extent asked by the plaintiff.

By the express provisions of the franchise ordinance the plaintiff agreed to the rates which it would charge during the pendency of any suit brought to judicially determine the lawfulness of the rate fixed by the Commission, and the Commission's order recognizes and respects that agreement. The plaintiff is in no position, therefore, to ask the assistance of this court in violating such agreement. Neither is the plaintiff entitled to a temporary injunction to prevent the enforcement of the forty-five cent rate, nor to prevent distribution of the impounded funds, nor to prevent reparation awards by the Commission. The order in terms suspends all of these matters so long as the question of the rate is pending in court.

Section 4 of the franchise ordinance, after providing for the charges which may be made pending investigation by the Railroad Commission and any subsequent proceeding in court, and for the impounding of ten cents per thousand cubic feet of such charge, further provides:

"It shall also keep an accurate record of all sums paid in by all and any of its customers under temporary rates and said records shall at all times be open to the city and to any customer as to his own contributions thereto; and the company, on demand from the city, if so ordered by said Railroad Commission or other tribunal, or court, shall file with said Railroad Commission or court where said proceedings or suit may be pending, a full and detailed statement of the amounts, times and sums contributed by each customer to said funds."

[fol. 91] By virtue of this provision the Railroad Commission in its order directed the plaintiff, within thirty days, to file with the Commission a full and detailed statement and exhibit of the names of each and all customers who have contributed to said funds, and the times and amounts of their several contributions thereto. Before the expiration of the thirty day period this suit was filed, and by the terms of the franchise ordinance such a report, if

required to be filed, should be filed with this court, and not with with the Railroad Commission. No good purpose could be served at this time in requiring the plaintiff to go to the expense of filing such a report with the Railroad Commission. If, ultimately, it should be determined that the rate fixed is confiscatory, the plaintiff would have been put to the expense of compiling and filing such a report when there was no necessity therefor. For this reason a temporary injunction may issue to the extent of prohibiting the Commission from requiring the filing of such report.

An order conforming to the views herein expressed may be prepared by counsel and submitted for entry.

Chas. H. Moorman, Smith Hickenlooper, C. I. Dawson.

January 28, 1930.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING INTERLOCUTORY INJUNCTION—Entered March 8, 1930

This cause having been submitted on the motion of the defendants to dismiss the bill of complaint for want of jurisdiction, and also on the motion of the defendants to [fol. 92] dismiss the bill of complaint for want of equity, and also on the motion of the plaintiff for an interlocutory injunction, and the Court being now advised it is ordered as follows:

1. The motion of defendants to dismiss the bill for want of jurisdiction is overruled, to which ruling the defendants except.

2. The motion of the defendants to dismiss the bill for want of equity is overruled, to which ruling the defendants except.

3. The motion of the plaintiff for an interlocutory injunction is allowed and granted to the following extent, to-wit: that the defendant, Railroad Commission of Kentucky, and the individual defendants, members of said Railroad Commission, be and they are hereby enjoined and restrained pending the further orders of this Court herein

from enforcing or instituting any proceedings for the purpose of enforcing the order of said Commission directing and ordering the plaintiff herein to file with the said Commission a detailed statement and exhibit of the names of each and all customers who have contributed to the impounded funds, and the times and amounts of their several contributions thereto, to all of which the defendants object and except.

4. The motion of the plaintiff for a temporary injunction is in all other respects, except as hereinbefore allowed and granted, overruled, to which ruling the plaintiff objects and excepts.

5. That save as to so much of the temporary restraining order entered herein by the Hon. A. M. J. Cochran, Judge, on the 19th day of October, 1929, as is continued in force by the third numbered paragraph of this order, the said temporary restraining order is now set aside and vacated.

6. It appearing to the Court from the record herein that until the final judgment of this Court the plaintiff is entitled to collect a temporary rate of sixty cents per thousand cubic feet, but as provided by the franchise contract, is required to impound ten cents per thousand cubic feet [fol. 93] out of said temporary rate to be held subject to the orders of this Court, and the said plaintiff, Central Kentucky Natural Gas Company, having filed its motion herein asking that the Court appoint some person to receive the impounded funds which have accumulated since the last impoundment made by said plaintiff in the proceeding before the Railroad Commission of Kentucky, and the sums hereafter collected and required to be impounded under said contract, and to fix the powers and duties of such receiver in the handling of said impounded funds, and the Court being advised, it is now ordered and adjudged as follows:

(a) That J. H. Carter of Lexington, Kentucky, be, and he is now hereby appointed as special receiver of this Court to receive, hold and disburse, subject and pursuant to the orders of this Court, the funds required to be impounded from time to time as provided in the franchise contract between the Central Kentucky Natural Gas Company and

the City of Lexington. Said receiver will qualify by taking an oath in this Court for the faithful performance and discharge of his duties, and will be required to execute bond with good surety thereon in the sum of $10,000.00, for the safe custody and distribution under the orders of the Court of the funds coming to his hands as such receiver.

* * * * * * *

12. The plaintiff, Central Kentucky Natural Gas Company, is ordered and directed to pay over to said special receiver, out of the temporary rate of sixty cents collected by it under its franchise contract, the sum of ten cents per thousand cubic feet for all natural gas furnished by said Company and collected for by it from its Lexington distributing system, including amounts collected since the last impoundment made by said plaintiff with the custodian of funds appointed by the Railroad Commission of Kentucky, and including all collections hereafter made by it under said temporary rate, said Company is further di- [fols. 94-96] rected to make said payments to said special receiver at least once each month, and on or before the 12th day of each month, but said plaintiff may make more frequent payments to said special receiver at its option.

13. Said plaintiff is further ordered and directed to give to each customer a receipt for the amount paid by him pending the final judgment of this Court; and said Company is directed to keep an accurate record of all sums paid in by each and all of its customers under said temporary rate; and said record so kept by said Company shall at all times be open for inspection to the City of Lexington, and to any customer as to such customer's contributions thereto, and to the attorneys, officials and agents for said City of Lexington, or such customer. Said Company is further required, whenever ordered by this Court, either upon the Court's own motion, or the motion of any party to this cause, to file in court a statement, or statements as the Court may require, showing the names of each and all of its customers who have contributed to said fund, and the amount paid in by each customer, such statement, or statements to be made up in orderly bookkeeping form.

14. The temporary injunction herein granted shall not be effective unless and until the plaintiff has executed bond in the usual form in the sum of $5,000.00, with surety to be approved by the clerk of this court.

Chas. H. Moorman, Smith Hickenlooper, Circuit Judges. C. I. Dawson, Dist. Judge.

[fol. 97] IN UNITED STATES DISTRICT COURT

ORDER OF SUBMISSION—Entered March 24, 1930

By agreement of parties herein it is ordered as follows:

* * * * * * *

2. That this cause be now submitted for final judgment on the pleadings herein and on a duly or properly attested or certified copy of the record including briefs, in the case of City of Lexington, and others, vs. Central Kentucky Natural Gas Company before the Railroad Commission of Kentucky, and that the testimony and exhibits introduced and offered by the parties, as shown by the transcript thereof, before said Railroad Commission shall be considered and used as the testimony and exhibits offered on behalf of the parties hereto, subject to objections for competency and relevancy to be made and heard upon the trial, but provided that the avowals made by parties on behalf of witnesses whose testimony was offered, as shown by said transcript of the testimony before the Railroad Commission, shall be considered as the testimony of said witnesses subject to objections thereto on the ground of competency and relevancy, to be made and heard upon the trial.

* * * * * * *

[fol. 98] Chas H. Moorman, Smith Hickenlooper, Circuit Judges. C. I. Dawson, Dist. Judge.

IN UNITED STATES DISTRICT COURT

ORDER AS TO RECORD—Entered July 21, 1930

Now comes the plaintiff, Central Kentucky Natural Gas Company, and files herein in triplicate sets, copies of the record and proceedings, the testimony and the exhibits had,

taken and filed before the Railroad Commission of the State of Kentucky, in the cause of the City of Lexington, et al., vs. Central Kentucky Natural Gas Company, and upon which this action has heretofore been submitted for final judgment.

Each of said triplicate sets consists of seven (7) large red envelopes, and the envelopes composing each set are respectively designated as "R-1," "R-2," "R-3"; and the envelopes in each set are respectively designated as Exhibit "A," Exhibit "B," Exhibit "C," Exhibit "D," Exhibit "E" and Exhibit "F."

Exhibit "A" in each of said triplicate sets contains the following portion of said record, as shown by a typewritten table of contents endorsed on the back thereof, as follows, to-wit:

[fol. 99] Table of Contents—Exhibit—Envelope "A"

1. Pleadings, petitions, motions and orders taken from files and order books Kentucky Railroad Commission.
2. Vol. 1 Transcript of Evidence for Defendant.
3. Company Exhibit No. 1—Valuation of Central Kentucky Natural Gas Company and Lexington Utilities Company—Ford, Bacon and Davis, as of Dec. 31, 1926.
4. Company Exhibit No. 2—Valuation of property devoted to natural gas service in urban and suburban district of Lexington—Ford, Bacon and Davis, as of December 31, 1926.
5. Company Exhibit No. 3—Valuation as of December 31, 1926, adjusted to December 31, 1927. Ford, Bacon and Davis.
6. Company Exhibit No. 4—Net Revenue available for return on property Central Kentucky Natural Gas Company and Lexington Utilities Company—based on operating reports—for years 1922 to 1926, inclusive, Ford, Bacon and Davis.
7. Company Exhibit No. 5—Rate of return on property Central Kentucky Natural Gas Company and Lexington Utilities Company—Ford, Bacon and Davis.
8. Company Exhibit No. 6—Estimate of net return available with first rate schedule proposed by Company—(Ford, Bacon and Davis).

9. Company Exhibit No. 7—Estimated rate of return on basis of first rate proposed by Company—Ford, Bacon and Davis.

The red envelope in each of said triplicate sets, designated as Exhibit "B," contains the following portion of said record, as shown by a typewritten table of contents endorsed on the back thereof, as follows, to-wit:

Table of Contents—Exhibit—Envelope "B"

1. Vol. II Transcript of Evidence for Defendant.
2. Company Exhibit No. 8—Net return available based on operating reports for the year 1927.
[fol. 100] 3. Exhibits—filed by Company—Nos. 10 to 25 inclusive—Contracts.
4. Company Exhibit No. 26—Von Gemmigen detailed report of pipe conditions.

The red envelope in each of said triplicate sets, designated as Exhibit "C," contains the following portion of said record, as shown by a typewritten table of contents endorsed on the back thereof, as follows, to-wit:

Table of Contents—Exhibit—Envelope "C"

1. Vol. III—Transcript of Evidence ~~for~~ Defendant.
2. Copy Von Gemmigen Map—Lexington pipe inspections.
3. Copy Von Gemmigen Maps—a, b, c, d—main line inspections.
4. Vol. IV Transcript of Evidence for defendant.
5. Kimball Exhibit No. 9—Estimated Revenue based on second rate schedule proposed by Company.
6. Kimball Exhibit No. 10—Letter from Republic Iron and Steel Company to Ford, Bacon and Davis.
7. Balance Sheets—Central Kentucky Natural Gas Company, as of December 31, 1926 and December 31, 1927.
8. Supplemental Transcript consisting of a letter from T. J. Tonkin to Moses R. Glenn, Chairman, Railroad Commission, with Exhibits, T. J. Tonkin, Jr., "B," "C," "D," "E" and "F" attached.

The red envelope in each of said triplicate sets, designated as Exhibit "D," contains the following portion of

said record, as shown by a typewritten table of contents endorsed on the back thereof, as follows, to-wit:

Table of Contents—Exhibit—Envelope "D"

1. Vol. V—Transcript of Evidence for Complainant.
[fol. 101] 2. Jirgal Exhibit No. 1—Report original cost plant and property—Central Kentucky Natural Gas Company.
3. Jirgal Exhibit No. 2—Cost of reproduction of physical properties as of December 31, 1926—adjusted to 1926 price level.
4. Beckner No. 1—Gas Reserves Eastern Kentucky.
5. Carter Exhibit No. 1—Inventory and appraisal as of Dec. 31, 1926, Central Kentucky Natural Gas Company.
6. Carter Exhibit No 2—Inventory and appraisal as of Dec. 31, 1926, Lexington Utilities Company.
7. Carter Exhibit No. 3—Valuation property devoted to service—urban and suburban district—Central Kentucky Natural Gas Company as of December 31, 1926.
8. Carter Exhibit No. 4—Valuation property devoted to service in Lexington—Lexington Utilities Company, as of December 31, 1926.
9. Carter Exhibit No. 5—Valuation as of December 31, 1926, adjusted to Dec. 31, 1927—Central Kentucky Natural Gas Company.
10. Carter Exhibit No. 6—Valuation as of December 31, 1926, adjusted to December 31, 1927—Lexington Utilities Company.
11. Carter Exhibit No. 7—Rate of Return—Lexington District—using various values for property considering Central Kentucky Natural Gas Company and rental paid Lexington Utilities Company.
12. Carter Exhibit No. 8—Rate of Return—Lexington District—using various values of property, Central Kentucky Natural Gas Company and Lexington Utilities Company as part of integer.
13. Carter Exhibit No. 9—Comparison of summaries of appraisal of Central Kentucky Natural Gas Company and Lexington Utilities Company—as of December 31, 1926.
14. Supplemental Transcript of Evidence—Consisting of letter from Columbia Gas and Electric Corporation to Se-

curity Trust Company (Holly v. Stevenson) to which is attached copy of letter from Central Kentucky Natural Gas Company to its stockholders dated November 17, 1927; copy of letter from Pittsburg Trust Company to stockholders Central Kentucky Natural Gas Company; copy form letter [fol. 102] sent Stockholders with reference to plan of exchange of stock Central Kentucky Natural Gas Company (See Vol. V—Transcript of Evidence, page 2).

15. Copy Magazine "Hail Columbia" with maps showing location Central Kentucky System with reference to Columbia System.

The red envelope in each of said triplicate sets, designated as Exhibit "E", contains the following portion of said record, as shown by a typewritten table of contents endorsed on the back thereof, as follows, to-wit:

Table of Contents—Exhibit—Envelope "E"

1. Vol. VI Transcript of Evidence for Complainant.
2. Carter Exhibit No. 10—Rate of Return for Lexington District.
3. Copy Lexington Gas Franchise.
4. Carter Maps—Nos. 1 to 5 (inclusive) showing pipe inspections on main line.
5. Carter Maps—Nos. 6 and 7—Extensions of same.
6. Carter Exhibit No. 12—Pipe inspections—Central Ky. Natural Gas Company and Lexington Utilities Company.
7. Carter Exhibit No. 13 a-b-c—Photostatic copies original billing of main line pipe—purchased by Central Company from Mark Mfg. Co.
8. Beckner—Corrected Exhibit (No. 1).

The red envelope in each of said triplicate sets, designated as Exhibit "F", contains the following portion of said record, as shown by a typewritten table of contents endorsed on the back thereof, as follows, to-wit:

Table of Contents—Exhibit—Envelope "F"

1. Vol. VII—Transcript of Evidence in rebuttal for Defendant.

2. Carter—Supplemental and Revised Exhibits Nos. 1 to 10 inclusive.

3. Exhibit "Mt. Sterling" (Copy of Mt. Sterling franchise).

[fols. 103-105] 4. Exhibit "Owensboro" (Copy deed conveying natural gas in Owensboro, Ky. field).

5. Yunker's No. 1—Map—Gas Reserves in Eastern Kentucky.

6. T. J. Tonkin, Jr., Exhibits Nos. 1 to 7—Subject: Service Charge.

7. Vol. VIII—Transcript—Consisting of proceeding before Railroad Commission on final order.

The foregoing records so filed, are filed as constituting the complete record made and had before said Railroad Commission, and the parties hereto stipulate that said record so filed constitutes the entire record; but further stipulate that in the event it should develop that any portion of said record is missing and either of the parties desire to supply the same, such missing portion of said record may be supplied.

Chas. H. Moorman, Circuit Judge. Smith Hickenlooper, Circuit Judge. C. I. Dawson, District Judge.

[fol. 106] IN UNITED STATES DISTRICT COURT

Before Moorman and Hickenlooper, Circuit Judges, and Dawson, District Judge

OPINION—Filed July 11, 1932

Per CURIAM:

The plaintiff in this cause seeks an injunction, enjoining the enforcement of an order of the Railroad Commission fixing a flat rate of 45 cents per thousand cubic feet as a just and reasonable rate for the natural gas service which the plaintiff furnishes to consumers of natural gas in the city of Lexington. The case is submitted on the evidence heard by the Railroad Commission. Much of this evi-

dence is conjectural. In so far as it relates to the capital value of that part of the plaintiff's plant allocable to Lexington it is directed to December 31, 1926. We are asked to determine the capital base as of that date.

The several estimates of value of the property differ widely. Kimball, a witness for the plaintiff, fixed the reproduction value new, less depreciation, of that part of the Central Kentucky Natural Gas Company plant allocable to Lexington at $2,028,069. Carter, a witness for the defendant, fixed the value at $1,189,489. Jirgal found the historic cost of the entire plant to be $2,653,035, without giving consideration to any going concern value and some other items, such as gas pumped and stored in the Menifee field and working capital.

It is apparent from an examination of the figures of each of the three witnesses referred to that no one of them proceeded in all particulars upon the correct basis. Kimball's estimates of overhead, costs of financing, etc., appear to us to be entirely too high. On the other hand, [fol. 107] Carter left out altogether some of the items that should be considered in arriving at a fair reproduction cost new of a utility plant for rate-making purposes. The proofs show that about 55.1% of the entire value should be allocated to Lexington. Allocating to Lexington this percentage, that part of the historic cost of the property actually owned by the plaintiff and allocable to Lexington would be $1,461,822, exclusive of going concern value and some other minor items not reflected by the books of the company. It appears, too, in the proofs that in 1928 the Columbia Gas & Electric Company bought 1199/1200 of the entire capital stock of the Central-Kentucky Natural Gas Company. The price paid was at the rate of $48 per share, or a total of $2,880,000. This was a voluntary sale, and the purchasers obviously were informed of the values represented by the property. Both parties were more or less expert on the value of such properties. Proceeding on this sales basis, the value of that part of the plaintiff's plant allocable to Lexington in the early part of 1928 would be $1,586,880.

Counsel devote considerable space in their briefs to the Menifee field. The plaintiff claims that this field had a value of $2,000,000 as a storage plant. We are not impressed with this claim, nor can we attach great importance

to much of plaintiff's evidence as to the reproduction cost new of the main transmission line. This latter evidence in some of its aspects is purely conjectural. Nor can any useful purpose be served by discussing the conflicting statements of the witnesses as to the several items that ordinarily go to make up capital value. Taking into consideration all the evidence touching the different methods of arriving at such value, we find that the sum of $1,586,880 represents a fair and just value of that part of the plant actually owned by plaintiff and allocable to Lexington.

[fol. 108] Another item to be considered in connection with the capital base is the distributing system in the City of Lexington. This system does not belong to the plaintiff. It is the property of the Lexington Utilities Company. The plaintiff has leased it from the Lexington Utilities Company and is using it exclusively in the distribution of gas in the city. There is a dispute as to whether the fair value of this property shall be considered as a part of the rate base, or its value be disregarded and the rental paid for its use by the plaintiff be treated as a part of the expense of operation. Probably a correct application of the principles of rate-making would require that the latter alternative be adopted. An analysis of the result in the way of returns to the company, whether we acept the valuation of the Lexington Utilities plant, as fixed by Carter or as fixed by Kimball, discloses that it would be more advantageous to the consumers in Lexington to treat the value of the distributing system as a part of the rate base, and disregard the rental contract between the two companies, than it would be to treat the sum required to be paid under the rental contract as operating expense and disregard the valuation in the rate base. Inasmuch as the plaintiff is insisting that this be done, there can be no objection to adopting this method. A careful consideration of the figures of Kimball and Carter and of their testimony with reference to the fair reproduction cost of the Lexington Utilities property as of December 31, 1926, as depreciated to its then condition, convinces us that we should accept the value of $611,227 fixed by Kimball, especially as this does not take into consideration any going concern value. This makes the rate base, as of December 31, 1926, which is the date as of which both parties desire the valua-

tion to be fixed, $1,586,880 plus $611,227, or a total of $2,198,107.

[fol. 109] In 1912 a contract was made between the United Fuel Gas Company and the Central Kentucky Natural Gas Company, generally by the terms of which the United Fuel should sell and deliver gas to the Central Kentucky Gas, at a price equal to one-half of the retail price realized by the latter company. This contract was for a period of twenty years and was in full force and effect on December 31, 1926. The Columbia Gas & Electric Company owns all of the stock of the United Fuel Gas Company, and, as heretofore indicated, in the early part of 1928 it acquired substantially all the stock of the Central Kentucky Natural Gas Company. The city contends that by reason of this fact the plaintiff is not entitled to charge as an expense the price paid for gas under its contract with the United Fuel without evidence of its reasonableness. We cannot agree with this contention. On this point the case is unlike Western Distributing Co. v. Pub. Service Com. Kansas, 285 U. S. 119, 124. Here the contract was made at arm's length, and so far as the record discloses, the United Fuel and the Central Kentucky Natural Gas Company had no relation to each other by reason of common ownership of stock at that time. That relationship did not exist prior to 1928, and inasmuch as we are asked to fix the rate base and determine the income as of December 31, 1926, we are of opinion that for such purpose we should accept the contract price of gas purchased from the United Fuel as part of the cost of operation.

The plaintiff's records show that the net operating revenues allocated to the Lexington district, disregarding rental payments to the Lexington Utilities Company under the contract heretofore referred to, and before any deduction for taxes, amortization, depletion, extraordinary maintenance, contingencies, interest and dividends, at a 40 cent rate were—

[fol. 110]

For 1922	$170,547.00
1923	217,168.00
1924	209,767.00
1925	201,645.00
1926	225,997.00

and that the average from 1922 to 1926, both inclusive, was $205,025, and that the average for the years 1924 to 1926, both inclusive, was $212,470, and that at a 50 cent rate for 1926 the net operating revenue before such deductions was $318,409. After making the deductions claimed by the plaintiff on account of amortization, depletion, extraordinary maintenance, and contingencies, the net income available for interest and dividends at a 40 cent rate was as follows:

1922	$21,590.00
1923	68,431.00
1924	59,102.00
1925	48,239.00
1926	74,702.00

and the average from 1922 to 1926, both inclusive, was $54,413, and from 1924 to 1926, both inclusive, was $60,681, and for 1926 at a 50 cent rate the net income available for interest and dividends was $156,724.

Plaintiff's exhibit on the actual operation for 1927 on the basis of a 40 cent rate for eleven months and a 50 cent rate for the month of December shows the net operating revenue before the deductions heretofore referred to of $169,695, and that after making such deductions the net income available for interest and dividends was $23,815, and for the same year 1927, on the basis of a 50 cent rate for the first eleven months and a 60 cent rate for December, the plaintiff claims that there was an operating revenue before the deductions referred to of $245,850, and a net available for interest and dividends after such deduction of $98,307.

Plaintiff also makes an estimate of what income would be produced in a normal year by applying the first schedule [fol. 111] of 60 cents, which was promulgated in accordance with the ordinance and which was reviewed and held exorbitant by the Railroad Commission. While plaintiff shows a total revenue of $701,276 under such schedule, yet strange as it may seem, by some process of reasoning it shows a net operating revenue before the deduction of taxes, etc., on the 60 cent rate of less than was actually received in 1927 by the application of a 50 cent rate for eleven months and a 60 cent rate for one month. It is equally strange that plaintiff shows a net income available

for interest and dividends under the first schedule for an assumed normal year of only $73,013, as against $98,307 for the year 1927, where a 50 cent rate was applied for eleven months of the year and a 60 cent rate for only one month. We cannot accept the soundness of any such figures.

Furthermore, in our opinion the plaintiff has made many unauthorized deductions from gross revenue. For the purpose of amortizing and depleting that part of its plant allocable to Lexington, plaintiff has made an annual deduction of $82,477. That figure is based, of course, upon plaintiff's valuation, and, as explained by Mr. Kimball, is also based upon the theory that the entire investment should be recovered in twenty years. It was arrived at by determining what sum set aside annually and compounded at 3½% would return the capital investment in twenty years. We think the interest rate used is too low. It should, we think, be a 4%, as there should be no difficulty in so investing the sinking fund intended to retire the capital investment so as to produce 4%. On this basis, and treating the value to be recovered at $1,586,880 (Central Kentucky Company), the annual amount necessary to be set aside to permit such recovery in twenty years would be in the [fol. 112] neighborhood of $54,000, with no allowance whatever for salvage. We are satisfied that when salvage is taken into account, $50,000 annually is ample to return to the plaintiff at the end of twenty years that portion of the value of its property not recoverable as salvage. This would increase plaintiff's net income in all the figures above given to the extent of $32,477 for each of the years referred to.

Plaintiff has allowed as a deduction for amortization and depletion of the Lexington Utilities Company plant $12,191 annually. This was arrived at by using the same method as was used in arriving at the amortization figure for the Central Kentucky Company, except that plaintiff estimated that there would be substantially a 50% salvage on the property of the Lexington Utilities Company. On that basis, and using the 4% interest rate instead of 3½, the sum allowed annually for amortization for the Lexington Utilities Company would be $10,263 instead of $12,191, or a difference of $1,928, and the annual net income figure should be increased by this amount.

Plaintiff has allowed as a further deduction from income the annual sum of $12,878 on account of extraordinary maintenance for that part of the Central Kentucky plant allocable to Lexington. This sum was based upon a total value of $2,028,056. We think it is fair that this sum should be reduced in proportion to the difference between that valuation and the valuation of $1,586,880 as heretofore fixed. This would roughly be a reduction of one-fifth of $12,878, leaving in round numbers $10,000 annually for extraordinary maintenance for that part of the Central Kentucky plant allocable to Lexington. This would make $2,878 additional to be added to net income available for interest and dividends.

[fol. 113] Plaintiff has allowed for extraordinary maintenance $8,384 annually for the Lexington Utilities Company plant. We think this is unreasonably large. Certainly $5,000 should be sufficient in this respect. This would leave $3,384 additional income available for interest and dividends.

Plaintiff has allowed for contingencies for the Central Kentucky Natural Gas property an annual additional sum of $5,600. We do not think this should be allowed. The extraordinary maintenance deduction heretofore allowed is sufficient to cover what was intended to be covered by the item of contingencies. This will add an additional $5,600 income available annually for interest and dividends.

Adding these sums together furnishes an additional $46,267 annually as income available for interest and dividends. This sum, added to the income of $156,724 which plaintiff admits would have been available in 1926 for the payment of interest and dividends by the application of a 50 cent rate to the business done that year, would make a total income available for interest and dividends for that year of $202,991, which would be approximately a ten per cent return on the total valuation of $2,198,107.

Plaintiff's figures show that by applying the 40 cent rate to the 1926 business, there was available for interest and dividends $74,702. Adding $46,267 to this sum would give $120,969 as income available for interest and dividends in 1926 on the 40 cent rate. This would be slightly less than 6% on the total valuation found by us. If plaintiff's net income as given by it under the 40 cent rate for all years from 1922 to 1925 inclusive is increased by $46,267, we

would still get less than 6% return on this valuation. It is in the record that 1926 had an unusually cold winter, and [fol. 114] the large income for that year is explained by the plaintiff on that ground. It is admitted, however, that 1927 had an unusually mild winter, and with a 50 cent rate applied for eleven months of that year and 60 cents for one month, plaintiff shows a net return available for interest and dividends of $98,307. When this figure is increased by the sum of $46,267 we have $144,574 available for interest and dividends obtained by the application of a 50 cent rate for the entire twelve months of 1927 except the month of December. This result may be reasonably accepted, it seems to us, as a fair prophecy of a minimum return during a normal year by the application of a 50 cent rate. This sum produces a return of substantially 7% on the valuation of $2,198,107. It seems apparent to us that a 50 cent rate may be reasonably expected to earn this return for the plaintiff.

Concededly, what may be a fair return for one utility may be inadequate for another. United Railway v. West, 280 U. S. 234, 249. Under the proofs in this case we think a 7% rate of return is an adequate return on the plaintiff's investment. The plan adopted by us provides for the return to the plaintiff of its entire capital by amortization in a period of twenty years. It permits the deduction of the necessary expenses incurred in ordinary maintenance. It furthermore sets up an annual reserve to cover extraordinary maintenance and repairs. It permits the deduction of all taxes, including the Federal income tax. In view of this assurance of the return of the entire principal in twenty years, and the allowances in the meantime of adequate amounts for necessary expenses and extraordinary maintenance, it seems to us that plaintiff's capital is about as safely invested as it can be under modern conditions. We therefore hold that a 7% return on the investment is adequate.

[fols. 115–121] We are not determining future values, nor do we undertake to fix a rate of return applicable to a changed valuation or to any future situation involving changes in the consumption of gas, cost of operation and the like. We think, however, that the 45 cent rate promulgated by the Commission, as applicable to the date herein involved, December 31, 1926, is inadequate and must be

regarded as confiscatory. An order of injunction, enjoining the enforcement of the Commission's order, will accordingly be issued, provided the plaintiff file in this court in ten days a written request that this court order all funds in excess of the 50 cent rate impounded under its orders distributed to and among the consumers of the plaintiff in Lexington entitled thereto, and provided further that it file in this court within ten days satisfactory evidence that it has made written request of the Railroad Commission of Kentucky and of the Fayette Circuit Court of Kentucky that those tribunals make like orders of distribution of all funds in excess of the fifty cent rate which are impounded and held under their orders.

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* * * * * * *

[fol. 122] IN UNITED STATES DISTRICT COURT

ORDER OVERRULING PETITION FOR MODIFICATION AND/OR AMENDMENT OF OPINION—Entered July 29, 1932

Upon the hearing of this cause the parties requested the court to fix the base value of plaintiff's property allocable to Lexington as of December 31, 1926, and determine whether the rate established by the Commission afforded a reasonable return on such values as of said date. The court having acted upon such requests and made its findings and determinations as of said date, the plaintiff now asks the court to make further findings and determinations based upon its contract with the Petroleum Exploration. Plaintiff did not begin to take gas under this contract until November of 1927, and it appearing, therefore, that there can [fol. 123] be no determination of the effect of such contract upon the reasonableness of the order of the Railroad Commission without a redetermination of the base value as of a date subsequent to that adopted and used by the court at the request of the parties and a reconsideration of what would be a reasonable rate under changed conditions, if any:

It is ordered that the petition for modification and amendment of the opinion be denied and that the plaintiff be given an extension of ten days from this date in which to

exercise its option of filing written requests for the distribution of the impounded funds.

July 29, 1932.

Chas. H. Moorman, Circuit Judge. C. I. Dawson, District Judge.

IN UNITED STATES DISTRICT COURT

AGREED ORDER AS TO SUBSTITUTION—Entered August 5, 1932

It appearing to the Court that the term of office of the defendant, T. H. Lauhon, as member of the Railroad Commission of Kentucky has expired, and that James Hatcher has been duly elected to said office and has qualified and is now a member of said Railroad Commission; and it further appearing to the Court that the term of office of the defendant, J. W. Cammack, as Attorney General of the Commonwealth of Kentucky has also expired, and that Bailey P. Wooten is now the duly elected and qualified Attorney Gen-[fol. 124] eral of the Commonwealth of Kentucky, it is now ordered, by agreement of parties, that the said James Hatcher be, and he is now hereby, substituted as defendant herein in lieu of the defendant, T. H. Lauhon, and that said Bailey P. Wooten be, and he is hereby, substituted as defendant herein in lieu and instead of the said J. W. Cammack.

Thereupon came attorneys for the defendants and entered the appearance of said James Hatcher as member of the Railroad Commission of Kentucky, and also entered the appearance of Bailey P. Wooten as Attorney General of the Commonwealth of Kentucky.

Done at Lexington, August 5, 1932.

C. I. Dawson, U. S. Dist. Judge.

IN UNITED STATES DISTRICT COURT

MOTION TO FIND FACTS SPECIALLY AND STATE SEPARATELY CONCLUSIONS OF LAW—Filed August 13, 1932

Comes the plaintiff, Central Kentucky Natural Gas Company, and in accordance with the provisions of New Equity

Rule 70½, now moves the Court to make the following special findings of fact, and to state separately its conclusions of law thereon, as follows:

I

Findings of Fact

1. That as of December 31, 1926, and also for the purposes of this case as of February 25, 1927, the date of the franchise contract, and as of October 9, 1929, the date of the [fols. 125 & 126] rate order of the Railroad Commission of Kentucky, complained against herein, and as of the date of the final decree of this Court, the Court find:

* * * * * * *

[fol. 127] f. That the total reproduction cost new, less deterioration, and the total fair value of the rate base property of the plaintiff company, was and is, as of the dates aforesaid, $3,669,400, and allocable to the Lexington district $2,028,069.

2. That the distribution system in the City of Lexington owned by Lexington Utilities Company and leased to plaintiff, was at all times herein used and useful in rendering the plaintiff's gas service in the Lexington district, and should be included as part of the rate base property for the purposes of this case; and that the reproduction cost new, less deterioration, and the fair value of said property; was and is as of the dates aforesaid, $611,227; that as of the dates aforesaid the total reproduction cost new, less deterioration, and the fair value of the combined properties of the plaintiff and Lexington Utilities Company, was and is $4,280,627, and that the fair value of said property allocable to the Lexington district, was and is $2,639,296.

3. That the Court ascertain and determine the net income of plaintiff available for return on the fair value of the rate base properties as may be fixed by it as of the following dates, to-wit: February 25, 1927 (the contract date), December 1, 1927 (the date of the 60¢ temporary rate), and October 9, 1929 (the date of the rate order).

[fol. 128] 4. That prior to and as of the date of the franchise contract, plaintiff had a 10-inch transmission pipe line which was being used for transporting natural gas from the eastern part of the state of Kentucky to the city of Lexington, and that said line was not of sufficient capacity to enable the company to comply with the terms of said franchise; that Section 23 of said franchise ordinance provided that if the company purchasing said franchise should have such 10-inch transmission pipe line, then said company should begin, or cause to have begun within six months after said franchise became effective, the construction of, and have in operation or cause to be operated within nine months thereafter, an additional main line of pipe from adequate sources of supply of natural gas in the state of Kentucky or the state of West Virginia, to the distribution system in the city of Lexington; that Section 22 of said ordinance provides that from and after the time when said company is furnishing gas through two pipe lines, as provided in Section 23, said company agrees that it will furnish gas to the consumers of the City of Lexington for all usual purposes, at all times, at a uniform and adequate pressure at the outlet of each customer's meter. That prior to said franchise contract, the Petroleum Exploration had developed a considerable gas field in Owsley County, Kentucky, and it was contemplated and understood at the time of said franchise contract that plaintiff would be required to have begun the construction of and completed an additional main line from said Owsley County gas field to the city of Lexington, and it was further known and understood by the parties that the plaintiff, in order to secure the construction of said additional pipe line, and in order to procure the delivery of an adequate supply of gas at the Lexington city gate by the Petroleum Exploration Company, would be required to pay said Petroleum Exploration Company 40 cents per m. c. f. for said gas. That in [fol. 129] compliance with the franchise contract requirement, the plaintiff entered into a contract with said Petroleum Exploration Company, bearing date March 24, 1927, (filed in evidence as Company Exhibit No. 22), whereby the plaintiff agreed to purchase from said company a minimum of 750,000,000 cu. ft. of gas per annum de-

livered at the Lexington city gate, and to pay therefore the sum of 40¢ per m. c. f. That Section 4 (E) of said franchise ordinance provided for a temporary rate of 50¢ per m. c. f. until the company was furnishing gas through a pipe line of sufficient capacity (which the plaintiff did not have), or through two pipe lines, as provided in Section 23 of said ordinance; and after said company was furnishing gas through two pipe lines, the company should collect a temporary rate of 60¢ per m. c. f., and further provided that of the amount collected under said temporary rates, there should be impounded the sum of 10¢ per m. c. f. until the final fixation of just and reasonable rates. That the consideration for the increase of said temporary rate from 50¢ to 60¢ was the construction of a main pipe line from Lexington to the Owsley County field and the delivery of gas through said pipe line by the Petroleum Exploration Company, and that plaintiff would thereby be enabled to comply with Section 22 of said ordinance as aforesaid. That a further consideration for the increase in said temporary rate was the additional cost to the plaintiff for the gas purchased under its contract with Petroleum Exploration. That said additional pipe line to the Owsley County gas field was completed, and gas began to be delivered in November, 1927. That said temporary rate of 50 cents was increased to the temporary rate of 60 cents as of December 1, 1927, and from and after said date the plaintiff was required to purchase from said Petroleum Exploration 750,000,000 cu. ft. of gas per annum as a cost of 40 cents per m. c. f., and the cost of said gas from and after De-
[fol. 130] cember 1, 1927, became a part of the operating expenses of plaintiff.

* * * * * * *

[fol. 131] 7. That the parties have requested the Court to ascertain and determine the fair value of the rate base properties as of December 31, 1926, and to adopt and apply the same as the rate base value of plaintiff's properties at all times from and after the date of the Franchise contract, to-wit: February 25, 1927, to and including the date of the final decree of this Court.

8. That the rates promulgated by the plaintiff company on February 26, 1927, were as of said date and at all times

thereafter, and are now, just and reasonable rates for the plaintiff's gas service, and any less rates would be unjust and unreasonable and confiscatory at all times from and after February 25, 1927, (the date of the franchise contract).

9. That the natural gas business in which the plaintiff is engaged, is more hazardous than is the case with other public utilities, and that the plaintiff is entitled to earn a ten per cent (10%) return on the fair value of the rate base properties, and by reason of the extra hazard in said natural gas business any less rate of return than ten per cent (10%) would be unjust and unreasonable.

[fol. 132] II

Conclusions of Law

The plaintiff requests the Court to state the following conclusions of law, to-wit:

1. That by reason of the impounded funds collected under the temporary rates, it is necessary, as a matter of law, to determine the reasonableness of the Commission rate of 45 cents as of the following dates and during the following periods of time, to-wit:

(a) From the date of the franchise contract to the date when the Owsley County gas began to be delivered and the cost of such gas began to be a part of the plaintiff's operating expenses, to-wit, December 1, 1927.

(b) Also from and after December 1, 1927, to and including the date of the Commission rate order, to-wit, October 9, 1929.

2. That in determining the plaintiff's net income available for return at all times from and after the beginning of the delivery of the Owsley County gas and the beginning of the collection of the 60¢ temporary rate, to-wit, December 1, 1927, it is necessary, as a matter of law, to include and allow for, as part of the plaintiff's operating expenses, the cost of said Owsley County gas.

* * * * * * *

[fol. 133] 5. That in determining the plaintiff's net income available for return at all times from and after De-

cember 1, 1927, the cost of the Owsley County gas should be included and allowed as part of plaintiff's operating expenses.

6. That the Commission rate of 45 cents was and is confiscatory at all times from and after the date of the franchise contract, to-wit, February 25, 1927.

7. That under the terms of said franchise contract, the plaintiff has the lawful right to charge and collect reasonable rates and charges for its gas service, and that the schedule of rates promulgated by the company on February 26, 1927, and filed with the Railroad Commission as provided by said contract, were and are just and reasonable rates as of the franchise contract date, and at all times thereafter, to-wit:

60 cents net (63 cents gross) minimum charge including the first 100 cu. feet per month;

6 cents net per 100 cu. ft. for the next 900 cu. ft. per month.

60 cents net (63 cents gross) per 1,000 cu. ft. for the next 4,000 cu. ft. per month;

[fol. 134] 50 cents net (53 cents gross) per 1,000 cu. ft. for all gas in excess of 5,000 cu. ft. per month.

8. That under the terms of said franchise contract, the plaintiff has the lawful right to charge and collect a service charge, or a minimum rate charge, and to charge and collect higher rates for smaller quantities of gas and lower rates for larger quantities of gas, and that the plaintiff, as a matter of law, has the right to fix and promulgate its own rate structure subject only to the limitation that such rate structure shall not be in excess of just and reasonable rates.

* * * * * * *

10. That the natural gas business in which the plaintiff is engaged is more hazardous than is the case with other public utilities, and that the plaintiff is entitled to earn a ten per cent return on the fair value of the rate base properties, and by reason of the extra hazard in said natural gas business any less rate of return than ten per cent would be unjust and unreasonable.

III

The plaintiff moves the Court to enter its order upon this motion prior to the entry of any decree herein.

D. L. Hazelrigg, Chester J. Gerkin, Allen, Botts & Duncan, Attorneys for Plaintiff.

[fol. 135] In United States District Court

Order of Submission—Entered August 13, 1932

The plaintiff herein having filed in the Clerk's Office of this Court at Lexington on August 13, 1932, its motion to make special findings of fact and to state separately its conclusions of law thereon, it is now ordered that said motion be noted of record and the same is submitted for the consideration and order of Court thereon.

Done at Lexington, August 13, 1932.

Chas. H. Moorman, Circuit Judge. Smith Hickenlooper, Circuit Judge. C. I. Dawson, U. S. Dist. Judge.

In United States District Court

Letter to Clerk—Filed Sept. 22, 1932

Mr. S. W. Stacey, Clerk U. S. District Court, Covington, Ky.

My Dear Mr. Stacey: Enclosed you will find final decree in the above case signed by Judge Moorman and myself, a majority of the three judge court sitting. Judge Dawson who was the third judge does not agree with the form and substance of the decree and was therefore unwilling to sign it.

[fol. 136] Should there be any inquiry you wish to make in this connection you can reach me by telephone at the Government Building, Cincinnati, Main 6720.

Yours very truly, Smith Hickenlooper.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO FIND SPECIALLY THE FACTS AND STATE CONCLUSIONS OF LAW—Entered September 22, 1932

The Court having considered the plaintiff's motion for special findings of fact and conclusions of law thereon, and the Court having in its opinion sufficiently found the facts and stated its conclusions thereon as set out in its decree, the said motion of plaintiff is overruled to which ruling the plaintiff excepts as to each of said motions.

Done at Lexington, September 22, 1932.

Chas. H. Moorman, U. S. Circuit Judge. Smith Hickenlooper, Circuit Judge. C. I. Dawson, U. S. Dist. Judge.

[fol. 137] IN UNITED STATES DISTRICT COURT

DECREE—Entered September 22, 1932

This cause came on to be heard, and upon consideration thereof after argument by counsel, orally and by brief, the court filed a written opinion setting forth its findings of fact and conclusions of law, pursuant to which it finds, orders and decrees as follows:

First. That as of December 31, 1926, the fair value of that part of the complainant's property allocable to Lexington is $1,586,880.

Second. That the fair value of the distributing system in the City of Lexington known as the Lexington Utilities Company property is treated, at complainant's instance, as a part of the rate base value of complainant's property allocable to Lexington, which fair value is found to be $611,227 as of December 31, 1926.

Third. That the total value of the complainant's property allocable to Lexington for the purpose of fixing the rate base as of December 31, 1926, the date the court was asked to determine such value, is the total of the two aforesaid values, equaling $2,198,107.

Fourth. That a seven per cent return on the total fair value of the rate base properties as heretofore determined is a fair and reasonable rate of return.

Fifth. That the forty-five cent rate for gas fixed by the Railroad Commission by its order entered on October 9, 1929, will not yield a seven per cent rate of return and is found to be inadequate and invalid; and plaintiff is entitled to an injunction restraining its enforcement, but only if the plaintiff will do equity by consenting to or request-
[fol. 138] ing the return to its customers in Lexington of all sums impounded under the orders of this court and other tribunals in excess of a reasonable charge as more fully indicated herein below.

Sixth. That a rate of fifty cents per m. c. f. for gas may reasonably be expected to produce net income available for dividends, after the deduction of all properly allowable amounts for amortization, depletion, extraordinary maintenance and current expenses, in the sum of $144,837, which sum represents a return of substantially seven per cent on the complainant's capital investment, which return is found to be fair and reasonable.

Seventh. That by an opinion filed herein on July 11, 1932, which opinion is made a part of this decree, it was provided, among other things, as follows:

"An order of injunction, enjoining the enforcement of the Commission's order, will accordingly be issued, provided the plaintiff file in this court in ten days a written request that this court order all funds in excess of the 50 cent rate impounded under its orders distributed to and among the consumers of the plaintiff in Lexington entitled thereto, and provided further that it file in this court within ten days satisfactory evidence that it has made written request of the Railroad Commission of Kentucky and of the Fayette Circuit Court of Kentucky that those tribunals make like orders of distribution of all funds in excess of the fifty cent rate which are impounded and held under their orders."

That before the ten days elapsed, the complainant filed its petition for a modification and/or amendment of the opinion; that on July 29, 1932, an order was entered by

the court overruling said petition, and that said order gave the complainant a further extension of ten days from said date wherein to exercise its option as aforesaid, and that on August 6, 1932, the complainant filed with the court a written statement declining to accept the condition set forth in the opinion.

[fol. 139] Eighth. That complainant, having declined to request or accept the condition precedent as fixed by the court to the granting of an injunction in its favor against the forty-five cent rate, namely—that all funds in excess of a fifty cent rate, impounded under the orders of this court and other tribunals, be distributed among the consumers in Lexington entitled thereto—it is now further ordered and decreed as follows:

(a) That the prayer for a permanent injunction herein be and the same is denied with costs to be paid by the complainant to the several defendants to be taxed.

(b) That the funds impounded under the temporary rates since the filing of this action should be and they are now hereby directed to be distributed to the consumers of the complainant on the basis of fifty cents per m. c. f. for gas as a reasonable rate.

(c) That the complainant, Central Kentucky Natural Gas Company, be and it is hereby ordered and directed to prepare, make up and file, in triplicate, in the office of the clerk of this court at Lexington, Kentucky, a full and detailed statement of the amounts between the forty-five cent rate and fifty cent rate per thousand cubic feet paid by all customers of the complainant at Lexington into the funds impounded under the franchise contract for and during the time when the rate collected under such franchise contract was fifty cents per thousand cubic feet; and that complainant also file a detailed statement of the amounts between the fifty and sixty cent rate per thousand cubic feet paid by all such customers into the impounded funds under said franchise contract for and during the time when the rate collected under such franchise contract was sixty cents per thousand cubic feet.

[fols. 140 & 141] Ninth. This cause is reserved on the docket and control thereof retained by the court for such

further proceedings and orders as may be had on motion of the parties or by the court on its own motion.

Chas. H. Moorman, Smith Hickenlooper, Circuit Judges.

IN UNITED STATES DISTRICT COURT

ORDER FILING PETITION FOR REHEARING—Entered October 22, 1932

The plaintiff, Central Kentucky Natural Gas Company, having filed in the office of the Clerk of this court at Lexington on October 22, 1932, its petition for rehearing, it is now ordered that said petition for rehearing be filed and noted of record.

Dated October 22, 1932.

Chas. H. Moorman, Smith Hickenlooper, C. I. Dawson, Judges.

[fol. 142] IN UNITED STATES DISTRICT COURT

ORDER DENYING PETITION FOR REHEARING—Entered November 22, 1932

It appearing to the court that the petition for rehearing filed herein by the plaintiff presents no questions of fact or law not considered by the court on the original hearing nor reconsidered and denied on the plaintiff's petition for modification and amendment of the opinion, and a majority of the court being of opinion that the true facts of the case and the correct conclusions of law applicable thereto are correctly found and stated in the opinion heretofore filed, and further, that the decree rendered thereon was within the discretionary power of the court and was fully justified in the circumstances disclosed by the record;

It is ordered that the petition for rehearing be denied.

Chas. H. Moorman, Smith Hickenlooper.

IN UNITED STATES DISTRICT COURT

ORDER FILING APPEAL PAPERS—Entered December 20, 1932

The plaintiff, Central Kentucky Natural Gas Company, having this day lodged with the Clerk of the Court its Peti-

tion for Appeal, Assignment of Errors and Statement for Jurisdiction on Appeal, same are now ordered filed.

The appeal bond is fixed in the amount of $1,000.00. Whereupon, plaintiff, Central Kentucky Natural Gas Com-
[fol. 143] pany, tendered a bond in said amount with the Fidelity & Deposit Company of Maryland, surety, and same is hereby approved and ordered filed.

Dated December 20, 1932.

Chas. H. Moorman, Smith Hickenlooper, C. I. Dawson, Judges.

In United States District Court

Petition for Appeal—Filed December 20, 1932

To the Honorable Charles I. Dawson, Judge of the United States District Court for the Western District of Kentucky; Smith Hickenlooper and Charles H. Moorman, Judges of the United States Circuit Court of Appeals for the Sixth Circuit, sitting as the statutory three-judge court in the above-styled cause:

The Central Kentucky Natural Gas Company feeling aggrieved by the decree entered in the above entitled cause on the 22nd day of September, 1932, hereby appeals from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and prays that this appeal be allowed and that citation be issued as provided by law, and that transcript of the record, proceedings, evidence and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States sitting at Washington, District of Columbia, under the rules of said Court in such case made and provided.

[fol. 144] Your petitioner further prays that the proper order relating to the security required of it to be made, and that same operate as a supersedeas herein, and that upon giving such security all further proceedings in this Court be suspended and stayed until the decision of said appeal by the Supreme Court.

Dated December 20, 1932.

Central Kentucky Natural Gas Co., by D. L. Hazelrigg, Chester J. Gerkin, Henry T. Duncan, Attorneys.

In United States District Court

Assignment of Errors—Filed December 20, 1932

Now comes Central Kentucky Natural Gas Company, plaintiff in the above entitled cause, and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for from the decree of this Court entered on the 22nd day of September, 1932.

I. The Court committed error in failing and refusing to find the facts of this cause specially and to state separately its conclusions of law and to enter a separate order thereon; and in limiting its findings of fact and conclusions of law to those contained in the opinion handed down July 11, 1932, and to the decree entered herein on September 22, 1932, and in holding that said decree and opinion constituted proper [fol. 145] or sufficient findings of fact or conclusions of law.

II. The Court committed error in overruling the motion of plaintiff to find specially certain facts as therein set out, and to state its conclusions of law thereon.

III. The Court committed error in determining the value of plaintiff's rate base property allocable to the Lexington district only as of December 31, 1926, which was prior to the franchise contract date, to-wit, February 25, 1927, and prior to the period in controversy; and in failing and refusing to find such value as of the date of the franchise contract, and as of the date of the Commission Rate Order, to-wit, October 9, 1929, and as of the date of the final decree of this Court.

IV. The Court committed error in failing and refusing to adopt and apply the value of the rate base property determined by it as of December 31, 1926, as the value of said property on the effective date of the franchise contract and for the purposes of this case at all times thereafter to the final decree of this Court.

V. The Court committed error in finding and stating in its opinion that it was requested to determine the rate base as of December 31, 1926; and in further finding and stating in its said opinion that the Court was asked to fix the rate base and determine the income as of December 31, 1926.

VI. The Court committed error in failing and refusing to ascertain and determine the net income of plaintiff available for return as for a normal year on the rate base as fixed by it as of the following dates, to-wit: February 25, 1927 (the contract date); December 1, 1927 (the date of the beginning of the 60-cent temporary rate); and October 9, 1929 (the date of the rate order).

[fol. 146] VII. The Court committed error in failing and refusing to find the following facts, to-wit: That prior to and as of the date of the franchise contract, plaintiff had a 10-inch transmission pipe line which was being used for transporting natural gas from the eastern part of the State of Kentucky to the city of Lexington, and that said line was not of sufficient capacity to enable the Company to comply with the terms of said franchise; that Section 23 of said franchise ordinance provided that if the Company purchasing said franchise should have such 10-inch transmission pipe line, then said company should begin, or cause to have begun within six months after said franchise became effective, the construction of, and have in operation or cause to be operated within nine months thereafter, an additional main line of pipe from adequate sources of supply of natural gas in the State of Kentucky or the State of West Virginia, to the distribution system in the City of Lexington; that said ordinance (Sections 22 and 23) requires plaintiff to furnish gas to the consumers of the City of Lexington for all usual purposes, at all times, at a uniform and adequate pressure at the outlet of each customer's meter.

That prior to said franchise contract, the Petroleum Exploration had developed a considerable gas field in Owsley County, Kentucky, and it was contemplated and understood at the time of said franchise contract that plaintiff would be required to have begun the construction of and completed an additional main line from said Owsley County gas field to the City of Lexington, and it was further known and understood by the parties that the plaintiff, in order to secure the construction of said additional pipe line, and in order to procure the delivery of an adequate supply of gas at the Lexington city gate by the Petroleum Exploration company, would be required to pay said company 40 cents per M. cubic feet for said gas. That in compliance with the [fol. 147] franchise contract requirement, the plaintiff

entered into a contract with said Petroleum Exploration, bearing date of March 24, 1927 (introduced in evidence as Company Exhibit No. 22), whereby the plaintiff agreed to purchase from said company a minimum of 750,000,000 cu. ft. of gas per annum delivered at the Lexington city gate, and to pay 40 cents per M. cubic feet therefor.

That Section 4 (E) of said franchise ordinance provided for a temporary rate of 50 cents per M. cubic feet until the company was furnishing gas through a pipe line of sufficient capacity (which the plaintiff did not have), or through two pipe lines, as provided in Section 23 of said ordinance; and that after the company began furnishing gas through two pipe lines, it should collect a temporary rate of 60 cents per M. cubic feet, and further provided that of the amount collected under said temporary rates, there should be impounded the sum of 10 cents per M. cubic feet until the final fixation of just and reasonable rates. That the consideration for the increase of said temporary rate from 50 cents to 60 cents was the construction of a main pipe line from Lexington to the Owsley field and the delivery of gas through said transmission line by the Petroleum Exploration Company to plaintiff, thereby enabling it to comply with Section 22 of said franchise contract. That a further consideration for the increase in said temporary rate was the additional cost of the plaintiff for the gas purchased under its contract with Petroleum Exploration. That said additional pipe line to the Owsley County gas field was completed, and deliveries of gas began in November, 1927. That said temporary rate of 50 cents was increased to 60 cents as of December 1, 1927, and from and after said date plaintiff was required to purchase from said Petroleum Exploration 750,000,000 cu. ft. of gas per annum at a price of 40 cents per M. cubic feet which cost became a part of its operating expenses.

[fol. 148] VIII. The Court committed error in failing and refusing to find that the rates promulgated by the company on February 26, 1927, were as of said date, and at all times thereafter to the final decree of this court, just and reasonable rates for plaintiff's gas service; and that any lower rates would be unjust and unreasonable and confiscatory at all times from and after February 25, 1927 (the date of the franchise contract).

IX. The Court committed error in limiting its finding that the 45 cent rate promulgated by the Commission was inadequate and confiscatory only as applied to December 31, 1926, which date was prior to the period in controversy, and in failing and refusing to find that said Commission rate was confiscatory as of the date of the franchise contract and at all times thereafter to the final decree of this Court.

X. The Court committed error in failing and refusing to state the following conclusion of law, to-wit, that in order to determine the rights of the parties to the funds impounded under the franchise contract it was necessary to determine the reasonableness of the Commission rate of 45 cents as of the contract date, and at all times thereafter to the final decree of this Court.

XI. The Court committed error in refusing to hold as a matter of law that in determining the plaintiff's net income available for return at all times from and after the beginning of the delivery of gas by Petroleum Exploration, and the beginning of the collection of the 60 cent temporary rates, to-wit, December 1, 1927, it was necessary to include and allow for as a part of plaintiff's annual operating expenses the cost of the minimum annual amount agreed to be purchased under the Petroleum Exploration contract.

XII. The Court committed error in finding and holding that a rate of 50 cents per M. cubic feet for gas may reason-
[fol. 149] ably be expected to produce net income available for dividends after the deduction of all properly allowable amounts for amortization, depletion, extraordinary maintenance, and operating expenses in the sum of $144,837.00; and in holding that said rate would produce a return of substantially 7% on the plaintiff's capital investment, and that a 7% rate of return is fair and reasonable for plaintiff.

XIII. The Court committed error in failing and refusing to find that the natural gas business in which plaintiff is engaged is more hazardous than is the case with other public utilities, and that the plaintiff is entitled to earn a ten per cent (10%) return on the fair value of the rate base properties, and by reason of the extra hazard of said natural gas business any less rate of return would be unjust and unreasonable.

XIV. The Court committed error in ordering that the funds impounded under the temporary rates since the filing of this action be distributed to the consumers of the plaintiff on the basis of 50 cents per M. cubic feet for gas as a reasonable rate, and without first determining just and reasonable rates and charges for plaintiff's gas service during said period.

XV. The Court committed error in failing and refusing to find as a matter of law that under the terms of said franchise contract plaintiff has the lawful right to charge and collect a service charge, or a minimum rate charge, and to charge and collect higher rates for smaller quantities of gas and lower rates for larger quantities of gas, and that the plaintiff has the right to fix and promulgate its own rate structure, subject only to the limitation that such rate structure should not be in excess of just and reasonable rates and charges.

XVI. The Court committed error in failing and refusing to find that a flat rate per M. cubic feet for natural gas is [fol. 150] discriminatory and confiscatory, in that such form of rate compels the plaintiff to furnish gas service to a large percentage of its customers at less than cost.

XVII. The Court committed error in requiring as a condition to the granting of a permanent injunction against the Commission rate of 45 cents, that plaintiff file in this court a written request that the Court order all funds in excess of the 50 cent rate impounded under its orders distributed to and among the customers of plaintiff in Lexington, and also to file in this court satisfactory evidence that it had made written request of the Railroad Commission of Kentucky, and of the Fayette Circuit Court of Kentucky, that those tribunals make like orders of distribution of all funds in excess of the 50 cent rate impounded and held under their orders; and in refusing to grant a permanent injunction against said Commission rate by reason of the plaintiff having declined to request or accept said condition precedent to the granting of such injunction, and in refusing to grant unconditionally a permanent injunction against said Commission Order, as prayed for by plaintiff in this action.

XVIII. The Court committed error in ordering that the costs incurred in this action be paid by plaintiff in contra-

vention of the express agreement contained in the franchise contract, and as set forth in Section 35 thereof, that all costs in all court proceedings should be paid for equally by the parties.

XIX. The Court committed error in overruling plaintiff's petition for rehearing.

Dated December 20, 1932.

D. L. Hazelrigg, Chester J. Gerkin, Henry T. Duncan, Attorneys for Plaintiff.

[fols. 151-153] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Entered December 20, 1932

The plaintiff, Central Kentucky Natural Gas Company, having this day filed its petition for appeal from the decree entered in the above entitled cause to the Supreme Court of the United States, together with an Assignment of Errors, and praying for an order to be made herein fixing the amount of security which plaintiff should give and furnish upon said appeal, and that upon the giving of said security all further proceedings of this Court be suspended and stayed until the determination of said appeal to said The Supreme Court of the United States;

Now, therefore, it is ordered that upon the plaintiff filing with the Clerk of this Court a good and sufficient bond in the sum of $1,000.00 to be approved by the Court, to the effect that if the plaintiff, Central Kentucky Natural Gas Company, shall prosecute the said appeal to effect and answer all damages and costs if it fails to make its plea good, then the said obligation to be void, otherwise to remain in full force and effect; that all further proceedings in this Court be and they are hereby suspended and stayed until the determination of said appeal to the Supreme Court of the United States, and it is further ordered that said bond shall operate as a supersedeas bond and for costs and damages on appeal.

Dated December 20, 1932.

Chas. H. Moorman, Smith Hickenlooper, C. I. Dawson, Judges.

[fols. 154-160] Citation, in usual form, showing service on B. P. Wooten et al., omitted in printing.

[fols. 161 & 162] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (AT LEXINGTON)

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Defendants

Condensed Statement of Pleadings Before Railroad Commission of Kentucky and Evidence Essential to Decision of Questions Presented on Appeal—Filed March 9, 1933

Lodged Jan. 16, 1933. S. W. Stacey, Clerk

The following is a condensed statement of the pleadings, proceedings and evidence taken before the Railroad Commission of Kentucky, upon which this case was submitted.

[File endorsement omitted.]

* * * * * * *

[fol. 163] ABSTRACT OF PLEADINGS AND PROCEEDINGS BEFORE RAILROAD COMMISSION

The certified record of the pleadings and proceedings before the Railroad Commission shows:

1. That on March 25, 1927, the City of Lexington and S. B. Featherstone filed before the Railroad Commission of Kentucky, a complaint against the Central Kentucky Natural Gas Company, complaining that the schedule of rates and charges promulgated by the Company on February 26th, 1927, pursuant to the provisions of the franchise-contract (See Exhibit "A" filed with Bill of Com-

plaint), were exorbitant; which said rates and charges were as follows:

(1) A minimum monthly charge of [illegible]-three ($.63) cents subject to a discount of three cents ($.03) if paid within the discount period, such minimum charge to include without further charge the first one hundred (100) cubic feet of gas used.

(2) For the next nine hundred (900) cubic feet, the sum of six cents ($.06) per one-hundred (100) cubic feet without further discount.

(3) For the next four thousand (4,000) cubic feet sixty-three cents ($.63) per one thousand (1,000) cubic feet, subject to a discount of three cents ($.03) per one thousand (1,000) cubic feet, if paid within the discount period.

(4) For all over five thousand (5,000) cubic feet, the sum of fifty-three cents ($.53) per one thousand (1,000) cubic feet, subject to a discount of three cents ($.03) per one thousand (1,000) cubic feet if paid within the discount period.

2. That on March 28, 1927, the Central Kentucky Natural Gas Company filed its answer consisting of a general denial.

3. That on April 13, 1927, pursuant to the joint motion of the complainants and defendant, John H. Carter was appointed as custodian of the funds agreed to be impounded under said franchise-contract.

4. That the trial of said case was continued by the orders [fol. 164] of said Railroad Commission from time to time until March 15, 1928, at which time the taking of testimony began.

* * * * * * *

7. That hearings were held from time to time before said Railroad Commission, and on October 9th, 1929, the Commission entered its order fixing a flat rate of forty-five cents ($.45) for the Gas Company's gas service.

[fol. 165] Condensed Statement of Evidence under Equity Rule 75(b)

Hearing March 14, 1928

For the Company

JOHN T. KIMBALL testified:

Witness was a member of the engineering firm of Ford, Bacon & Davis, Inc., of New York City and qualified as an experienced valuation engineer and accountant.

That he had made a valuation of the properties of Central Kentucky Natural Gas Company and also of the Lexington Utilities Company (being the distribution plant situated in the City of Lexington and leased to the Central Company), on the basis of reproduction cost new less deterioration as of December 31, 1926, and also as of December 31, 1927 (by adding to the value as of December 31, 1926, the net additions to plant during the year 1927), and that the difference in the value of said properties as depreciated by him as of said two dates amounted to $141,210.00.

Witness presented and filed the following Exhibits, to-wit:

Company Exhibit No. 4, dated January 4, 1928, and entitled "Net revenue available for return on property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., based on operating reports of the Central Kentucky Natural Gas Company, Inc., for the years 1922 to 1926, inclusive."

Company Exhibit No. 6, dated February 19, 1928, and en-[fol. 166] titled "Estimate of net revenue available for return on property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., with proposed retail rate of 60-cent minimum charge, including first 100 cu. ft. per month; 6 cents per 100 cu. ft. for next 4,900 cu. ft. per month; 50 cents per M C. F. for all over 5,000 cu. ft. per month."

Company Exhibit No. 8, dated April 17, 1928, and entitled "Net revenue available for return on property of Central Kentucky Natural Gas Company, Inc., and Lexington Utili-

ties Company, Inc., based on operating reports of the Central Kentucky Natural Gas Company, Inc., for the year 1927."

* * * * * * *

A copy of each of said Exhibits is filed herewith as a part hereof excluding from Exhibit No. 4, as not material to any assigned error on this appeal, pages 19 to 24, both inclusive, and pages 26 to 45, both inclusive.

The material portion of the testimony of said witness concerning the aforesaid Company Exhibits No. 4, No. 6 and No. 8 is reproduced in the form of questions and answers in the exact words of said witness as follows:

[fol. 166½] Taxes

The pages immediately following show in detail the Franchise and Tangible Property Taxes by State and Counties, the Federal income tax and miscellaneous taxes for the years 1922 to 1926, inclusive.

In these statements the taxes shown on the annual reports of the Central Kentucky Nat. Gas Company Inc. have been adjusted, based upon the Tax Commissioner's valuation, to properly apportion to each year's operations, the taxes applicable to that year. Details of these adjustments are shown, as are also the details of allocation to the Lexington District. The franchise, tangible property and special assessment taxes paid in the State of Kentucky and the various cities and counties are allocated to the Lexington District either directly, such as the tax paid to the City of Lexington, or on a gas sales basis, giving effect to the location of the county wherein the taxes were assessed. The Federal income tax was allocated to the Lexington District on the ratio of gas sales in that district to the total gas sales of the Company.

[fol. 166-a] [File endorsement omitted]

COMPANY EXHIBIT No. 4

[fol. 166-a-1] Net Revenue Available for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., Based on Operating Reports of the Central Kentucky Natural Gas Company, Inc., for the Years 1922 to 1926, Inclusive

January 4, 1928

Ford, Bacon & Davis, Incorporated, Engineers, New York, Philadelphia, Chicago, San Francisco, New Orleans

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[fol. 166-a-3] Net Revenue Available for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., Based on Operating Reports of the Central Kentucky Natural Gas Company, Inc., for the Years 1922 to 1926, Inclusive

January 4, 1928

The following statements show the revenue of the Central Kentucky Natural Gas Company, Inc. available for return on the combined property of the Central Kentucky Natural Gas Company, Inc., and the Lexington Utilities Company, Inc. for the years 1922 to 1926, inclusive, together with all supporting figures. The Central Kentucky Natural Gas Company, Inc., leases the property of the Lexington Utilities Company, Inc.—which consists of the distribution system inside the corporate limits of the City of Lexington—and operates this distribution system as a part of the Central Kentucky Natural Gas Company's system. In the following statements, the rental paid to the Lexington Company by the Central Company (12.5 per cent of the gross revenue in Lexington less $1,250 per year) has been excluded from the expenses of the latter.

The term, "Lexington District", as used in the various statements, includes the suburbs of the City as well as the City proper.

In 1926 the Central Kentucky Natural Gas Co., Inc. retailed gas at 50 cents per M. c. f., 10 cents of which was impounded pending settlement of rate controversy. The [fol. 166-a-4] Company therefore prepared two annual reports, one based on a 40 cent rate and the other on a 50 cent rate. Gas purchased contracts, in a number of instances, fix the price of gas sold to the Central Kentucky

Natural Gas Co. Inc. as a function of the retail selling price of gas sold by that Company, and therefore a change in the retail selling price of gas affects the expenses as well as the revenue. The income and expenses for 1926 are shown, in the following statements, based on both the 40 cent and 50 cent rates.

The pages following show:

(a) Net revenue available for return.

(b) Summary of Revenue and Expenses.

(c) Details of Gross Revenue.

(d) Details of Expenses and Taxes.

(e) Estimated Annual Allowance necessary for amortization, depletion, extraordinary maintenance and contingencies.

Unless stated otherwise, the gas sales (M. c. f.) and the revenue and expenses tabulated on the following statements were taken from the books and/or reports of the Central Kentucky Natural Gas Company, Inc.

[fol. 166-a-5]

Net Revenue of the Central Kentucky Natural Gas Co., Inc., Available for Return on Property of Central Kentucky Natural Gas Co., Inc., and Lexington Utilities Co., Inc., for the Year 1926, with Retail Gas Sales at 40 cents per M. C. F.

	Entire system	Lexington district
Net Operating Revenue Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends	$322,911	$196,232
Deduct: Estimated Annual Allowance necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	202,268	121,530
Net Revenue Available for Return	$120,643	$74,702

[fol. 166-a-6]

Net Revenue of the Central Kentucky Natural Gas Co., Inc., Available for Return on Property of Central Kentucky Natural Gas Co., Inc., and Lexington Utilities Co., Inc., for the Year 1926, with Retail Gas Sales at 50 cents per M. C. F.

	Entire system	Lexington district
Net Operating Revenue Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends	$428,218	$278,254
Deduct: Estimated Annual Allowance necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	202,268	121,530
Net Revenue Available for Return	$225,950	$156,724

[fol. 166-a-7]

Net Revenue of the Central Kentucky Natural Gas Co., Inc., Available for Return on Property of the Central Kentucky Natural Gas Co., Inc., and the Lexington Utilities Co., Inc., based on the average of the Years 1922 to 1926, inclusive, with the Retail Gas Sales at 40 Cents per M. C. F.

	Entire system	Lexington district
Net Operating Revenue Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends:		
1922	$246,424	$143,120
1923	285,153	189,961
1924	279,164	180,632
1925	250,593	169,769
1926	322,911	196,232
Total	$1,384,245	$879,714
Average	$276,849	$175,943
Deduct: Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	$202,268	$121,530
Net Revenue Available for Return	$74,581	$54,413

(Here follows revenue and expense statement, side folios 166-a-8-166-a-10)

[fols. 166-a-8-166-a-10] Revenue and Expense Statement for Entire System and Proportion Allocated to Lexington District Years Ended December 31, 1922, to 1926, Inclusive

	Entire system						Lexington District					
					1926						1926	
	1922	1923	1924	1925	At 40c rate	At 50c rate	1922	1923	1924	1925	At 40c rate	At 50c rate
Gross Revenue from Operation												
Gas Sales:												
Lexington—urban and suburban	$428,100	$496,782	$530,668	$510,699	$522,349	$652,509	$428,100	$496,782	$530,668	$510,699	$522,349	$652,509
Winchester and Mt. Sterling	157,231	179,105	190,142	175,802	188,056	233,119	.....	.....	.....	.....	.....	.....
Wholesales	156,721	147,456	164,049	161,531	177,146	192,395	.....	.....	.....	.....	.....	.....
Total Gas Sales	$742,052	$823,343	$884,859	$848,032	$887,551	$1,078,023	$428,100	$496,782	$530,668	$510,699	$522,349	$652,509
Gasoline	.....	5,376	8,794	7,724	11,236	11,236	.....	3,236	4,962	4,358	6,339	6,339
Shop	7,612	5,911	6,356	2,378	6,091	6,091	5,588	4,339	4,666	1,746	4,471	4,471
Interest	43	42	42	143	(A)1,481	1,481	24	24	24	81	836	836
Miscellaneous	420	773	1,039	658	665	665	237	436	586	371	375	375
Total Gross Revenue	$750,127	$835,805	$901,099	$858,935	$907,024	$1,097,496	$433,949	$504,817	$540,906	$517,255	$534,370	$664,530
Operating Expenses												
Field and Main Line Expense	$34,159	$46,249	$52,265	$50,276	$48,811	$48,811	$19,273	$26,094	$29,488	$28,366	$27,539	$27,539
City Plant Expense	47,476	48,871	55,878	57,398	61,900	61,900	32,752	33,433	40,115	35,415	42,621	42,621
General Expense	29,820	26,036	35,752	43,845	32,401	32,401	17,335	15,188	20,816	25,546	18,954	18,954
Gas Purchased	343,924	377,408	426,657	401,069	388,619	455,524	194,042	212,934	240,720	226,283	219,259	257,007
Total Operating Expenses	$455,379	$498,564	$570,552	$552,588	$531,731	$598,636	$263,402	$287,649	$331,139	$315,610	$308,373	$346,121
Net Revenue before Taxes	$294,748	$337,241	$330,538	$306,347	$375,293	$498,860	$170,547	$217,168	$209,767	$201,645	$225,997	$318,409
Taxes	48,324	52,088	51,374	55,754	52,382	70,642	27,427	27,207	29,135	31,876	29,765	40,155
Net Operating Revenue, Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends	$246,424	$285,153	$279,164	$250,593	$322,911	$428,218	$143,120	$189,961	$180,632	$169,769	$196,232	$278,254

NOTE—(A) Company's Books show $5,647; Ford, Bacon & Davis, Inc. deduct the interest received from Hillsdale Gas Co., i.e. $5,504, which has been considered herein as non-operating revenue.

[fols. 166-a-11-166-a-15] Central Kentucky Natural Gas Company, Inc.

Calculation of Percentages Used in the Allocation of Revenue, Expenses, and Taxes to Lexington District, Based on Company's Gas Sales

	Year ended December 31						
					1923 to 1926, incl.		
Retail Sales:	1923 (M. c. f.)	1924 (M. c. f.)	1925 (M. c. f.)	1926 (M. c. f.)	Total (M. c. f.)	Average (M. c. f.)	Percentages used in allocation
Lexington Urban	1,178,656	1,236,613	1,166,131	1,218,312	4,798,712	1,199,678	.....
Lexington Suburban	62,426	89,500	108,887	85,590	346,403	86,601	.....
Total Lexington District	1,241,082	1,325,113	1,275,018	1,303,902	5,145,115	1,286,279	56.42%
Winchester	285,787	304,017	277,685	295,304	1,162,793	290,698	12.75
Mt. Sterling	164,003	173,056	163,849	177,926	678,834	169,709	7.44
Total Retail Sales	1,690,872	1,802,186	1,716,552	1,777,132	6,986,742	1,746,686	
Wholesale Sales:							
Frankfort Kentucky Natural Gas Co	321,829	339,933	317,067	331,847	1,310,676	327,669	.....
Kentucky Utilities Co	174,537	210,642	187,373	189,145	761,697	190,424	.....
Blue Grass Natural Gas Company	15,690	15,793	14,750	14,185	60,418	15,104	.....
Total Wholesale Sales	512,056	566,368	519,190	535,177	2,132,791	533,197	23.39
Total Sales	2,202,928	2,368,554	2,235,742	2,312,309	9,119,533	2,279,883	100.00%

(Here follows statement of gas production and purchases, years ended December 31, 1922 to 1926, inclusive, side folio 166-a-16.)

[fol. 166-a-16]

Central Kentucky Natural Gas Company, Inc.

Gas Production and Purchases, Years Ended December 31, 1922 to 1926, Inclusive

	1922			1923			1924			1925			1926				
														Based on 40c sales rate (A)		Based on 50c sales rate (A)	
	M. c. f.	Amount	Per M. c. f.	M. c. f.	Amount	Per M. c. f.	M. c. f.	Amount	Per M. c. f.	M. c. f.	Amount	Per M. c. f.	M. c. f.	Amount	Per M. c. f.	Amount	Per M. c. f.
Gas Purchases:																	
United Fuel Gas Co	1,501,323	$260,247	17.3c	1,535,583	$307,116	20.0c	1,198,486	$239,697	20.0c	940,507	$188,101	20.0c	955,126	$191,025	20.0c	$238,781	25.0c
Ky. Cities Gas Co	339,642	47,550	14.0	72,358	10,130	14.0	331,811	58,067	17.5	226,991	39,723	17.5	147,369	25,790	17.5	29,474	20.0
Bed Rock Petroleum Co	324,063	34,373	10.6	247,735	29,728	12.0	205,973	24,717	12.0	165,824	19,899	12.0	138,177	16,581	12.0	20,727	15.0
Carrol Oil and Gas Co	659,543	60,469	9.2	537,988	53,799	10.0	310,613	31,061	10.0	251,953	25,195	10.0	259,454	25,946	10.0	25,946	10.0
Petroleum Export Co., Inc	33,428	4,011	12.0	92,407	11,089	12.0	164,782	24,717	15.0	140,746	21,112	15.0	112,965	16,945	15.0	19,769	17.5
Hilldale Gas Co	.....	.....	.....	.....	.....	.....	31,864	6,373	20.0	751,498	150,300	20.0	560,515	112,103	20.0	130,787	23⅓
Boston and S. W. Oil and Gas Co	.....	.....	.....	38,317	3,832	10.0	120,129	12,013	10.0	104,181	10,418	10.0	94,243	9,424	10.0	9,424	10.0
Pa.-John Oil Co	.....	.....	.....	41,369	3,476	8.4	135,000	13,500	10.0	77,762	7,776	10.0	75,524	7,552	10.0	7,552	10.0
Martin Oil and Gas Co	.....	.....	.....	.....	.....	.....	48,934	4,894	10.0	33,171	3,317	10.0	35,633	3,563	10.0	3,563	10.0
Portsonmouth O. K. Gas Co	.....	.....	.....	.....	.....	.....	25,073	2,507	10.0	22,209	2,221	10.0	23,946	2,395	10.0	2,395	10.0
East Ky. Oil Co	.....	.....	.....	.....	.....	.....	55,023	5,502	10.0	36,076	3,608	10.0	31,548	3,155	10.0	3,155	10.0
Eastern Ky. Oil Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,291	129	10.0	21,861	2,186	10.0	2,186	10.0
Fearless Oil & Gas Co	.....	.....	.....	4,907	491	10.0	14,304	1,431	10.0	13,714	1,372	10.0	17,868	1,787	10.0	1,787	10.0
Alamander Kelley	.....	.....	.....	.....	.....	.....	57,761	5,776	10.0	59,373	5,937	10.0	59,983	5,998	10.0	5,998	10.0
George and Touma	.....	.....	.....	.....	.....	.....	444	44	10.0	9,012	901	10.0	17,298	1,730	10.0	1,730	10.0
Lewis Vincent	.....	.....	.....	.....	.....	.....	.....	.....	.....	5,475	1,095	20.0	8,860	1,772	20.0	1,772	20.0
J. T. Hare & Son	.....	.....	.....	.....	.....	.....	.....	.....	.....	22,347	2,235	10.0	16,248	1,625	10.0	1,624	10.0
McNab & Cheuvront	.....	.....	.....	.....	.....	.....	.....	.....	.....	14,749	1,475	10.0	31,243	3,124	10.0	3,124	10.0
Total Gas Purchases	2,857,999	$406,650	14.2c	2,570,664	$419,661	16.3c	2,700,197	$430,299	15.9c	2,876,879	$484,814	16.8c	2,607,861	$432,701	16.6c	$509,794	19.5c
Less Amount Stored in Menifee Field (D)	775,049	72,020	9.3	672,055	67,534	10.0	499,289	49,929	10.0	837,688	112,209	13.4	788,600	102,245	13.0	112,433	14.3
Net Available Purchased Gas	2,082,950	$334,630	.....	1,898,609	$352,127	.....	2,200,908	$380,370	.....	2,039,191	$372,605	.....	1,819,261	$330,456	.....	$397,361	.....
Production:																	
Withdrawn from Menifee Field (B)	92,781	(C)	(C)	291,625	(E)	(E)	390,594	$38,592(F)	.....	232,642	$27,731	11.9	473,968	$56,497	11.9	$56,497	11.9
Produced from Red Bush Field	.....	.....	.....	212,247	.....	.....	166,135	.....	.....	103,762	.....	.....	220,148	.....	.....	.....	.....
Total Production	92,781	(C)	(C)	503,872	.....	.....	556,729	$38,592	.....	336,404	$27,731	.....	694,116	$56,497	.....	$56,497	.....
Total Gas Available for Sale and Use as per Company's Books	2,175,731	$334,630	15.4c	2,402,481	$352,127	14.7c	2,757,637	$418,962	15.2c	2,375,595	$400,336	16.9c	2,513,377	$386,953	15.4c	$453,858	18.1c
Adjustments:																	
Withdrawn from Menifee Field for Use in Menifee Compressor Station (D)	2,057	$202	9.8c	8,625	$726	8.4c	14,722	$1,681	11.4	6,146	$733	11.9c	13,973	$1,666	11.9c	$1,666	11.9c
Cost of Gas withdrawn from Menifee Field (See above under caption "Production") based on cost to Company at time put into storage	.....	9,294	.....	.....	24,555	.....	.....	6,014	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total Adjustment	2,057	$9,092	.....	8,625	$25,281	.....	14,722	$7,695	.....	6,146	$733	.....	13,973	$1,666	11.9	$1,666	11.9c
Total Gas Available for Sale and Use, as adjusted	2,177,788	$343,924	15.8c	2,411,106	$377,408	15.7c	2,772,359	$426,657	15.4c	2,381,741	$401,069	16.8c	2,527,350	$388,619	15.4c	$455,524	18.0c

Note.—See following page for footnote.

[fol. 166-a-17] Notes Relative to Preceding Statement of Gas Production and Purchases

Note (A).—Some of the purchase gas contracts prescribe the price as percentage of the sales price of gas and consequently the cost of purchased gas is dependent upon the sale price. The contract with the United Fuel Gas Co. for the price of purchased gas is 50 per cent of the average domestic rate. The Bed Rock Petroleum Co. contract is 30 per cent of the average domestic rate. The Kentucky City Gas Co. contract is 35 per cent of the higest domestic rate, the purchased price per M. C. F. not to be less than 14 cents. The Hillsdale Gas Co. contract is 20 cents per M. C. F. plus ⅓ of any increase in domestic rate over 40 cents per M. c. f.

(B).—Amount withdrawn from Menifee storage field as shown on Company records.

(C).—According to Company's accounting method this 92,781 M. c. f. represented a part of the gas which had been put into storage in 1919 and the cost charged to expenses in that year; therefore no additional charge to expenses in 1922. To properly show the true expenses in 1922 this gas is priced at the cost to the Company, 9.8 cents per M. c. f., and included in this statement under adjustments.

(D).—Gas withdrawn from Menifee storage field is not metered but is computed on the basis of compressor capacity. This fails to account for gas used in operation of compressor which is considered also to have been withdrawn from Menifee field.

(E).—According to Company's accounting method this 291,625 M. c. f. represents gas which was stored in 1919 and in 1920 and which was charged to expenses in those years; consequently no additional charge was made to expenses in 1923. To properly show the true expenses in 1923 this gas is priced at the cost to the Company, 8.4 cents per M. c. f., and included in this statement under adjustments.

[fol. 166-a-18] (F).—Of this 390,594 M. c. f. the Company's accounting method showed that 66,838 M. c. f. represented gas which was purchased and stored in 1920, and 323,756 M. c. f. purchased and stored in 1921. The 66,838

M. c. f. had been charged to expenses in 1920 and consequently no additional charge was made in 1924; but the 323,756 M. c. f. represented gas stored in 1921 and carried as an asset on the Balance Sheet at 11.92 cents per M. c. f. Consequently when withdrawn from storage it was charged to expenses. To properly reflect the true expenses for 1923 the 66,838 M. c. f. was priced at cost to the Company and included in this statement under adjustments.

(G).—Under Company's accounting method, gas put into storage in Menifee Field each year is carried on the Balance Sheet as the lowest price gas it buys. Thus if it buys gas at prices ranging from 10 cents upward, the 10 cent gas is considered as that which is placed in storage rather than the average priced gas. During 1919 and 1920 gas put into storage was not carried on the Balance Sheet but was all charged to expenses during those years.

[fol. 166-a-19]

Central Kentucky Natural Gas Company, Inc.

Allocation of the Adjusted Cost of Gas Purchased to the Lexington District

Year	Entire system	Basis of allocation	Lexington district
1922	$343,924	Gas Sales—56.42%	$194,042
1923	377,408	Gas Sales—56.42%	212,934
1924	426,657	Gas Sales—56.42%	240,720
1925	401,069	Gas Sales—56.42%	226,283
1926 At 40c Rate	388,619	Gas Sales—56.42%	219,259
1926 At 50c Rate	455,524	Gas Sales—56.42%	257,007

[fol. 167] "The Witness: This Exhibit No. 4 sets forth the actual revenue and expenses of the Central Kentucky Natural Gas Company for the years 1922-1926, both inclusive. From the expenses, I wish to repeat, I have deducted the rentals paid the Lexington Utilities Company. That makes the earnings of the Central Kentucky Natural Gas Company that much larger than they actually were. The rental which was paid to the Lexington Utilities Company was in the neighborhood of $57,000.00 or $58,000 per year, more or less, and that has been taken out of the expenses, and to that extent, the net income is increased by that amount.

In this statement the gas for the years 1922 to 1925, inclusive, was sold at 40¢ per thousand cubic feet. Starting

in the year 1926, gas was sold at 50¢ per thousand cubic feet. Ten cents per thousand cubic feet of that amount, however, was impounded, but the Company, in setting up this operation report for that year, set it up so as to show what it would have received if that money which was impounded had been turned over to it. So, for the year 1926 we have two statements, one showing what the Company would have received at 40¢ and one showing what the Company would have received at 50¢ * * *.

[fol. 168] Now then, this report is divided into five major subdivisions (see page 2 of Exhibit No. 4):

1. Net Revenue Available for Return.
2. Summary of Revenue and Expenses.
3. Details of Gross Revenue.
4. Details of Expenses and Taxes.
5. Estimated Annual Allowance necessary for Amortization, depletion, extraordinary maintenance and contingencies.

On page 3 is the "Net Revenue of the Central Kentucky Natural Gas Company, Inc., Available for Return on Property of the Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., for the year 1926, with retail gas sales at 40¢ per M. c. f." The Company earned, after expenses and available for amortization, depletion, extraordinary maintenance, contingencies, interest and dividends, $322,911 on the entire system, and applicable to the Lexington District, $196,232. Deducting the estimated annual allowance necessary for amortization, depletion, extraordinary maintenance and contingencies, the net revenue available for return on the property used and useful for serving the consumers of the entire system was $120,643; and, in the Lexington district, $74,702.

On the next page there are the corresponding figures [fol. 169] based on the retail gas sales at 50¢. If the Company had obtained all of that revenue, instead of ten cents being impounded, it would have earned a revenue available for return on the entire system of $225,950, and in the Lexington District $156,724.

On page 5 is shown the same figures based on the average earnings of the Company from 1922 to 1926, inclusive, during which time the gas was sold at 40¢ except in the year 1926, but in that year and in this statement it is all predi-

cated on a sale of gas at 40¢, and the average over that period of revenue available for return on the entire property is $74,581 for the entire system, and $54,413 for the Lexington District.

Referring to the figures opposite the years 1922, 1923, 1924, 1925 and 1926, you will note that the year 1926 was considerably in excess of any of the previous four years. You residents of this locality probably recall that that year was an exceptionally cold year, and that was what caused this increase in 1926.

At this time we are not able to submit to you the figures for the year 1927. Those figures were made available to us only in the last few days, and it is our intention to get the figures and present them to you for your consideration. But I can state, the year 1927 being a much warmer year than is ordinarily experienced in this locality, the earnings will be found to be much less than appear on this sheet.

On page 6 you will find a summary of the details of the earnings and expenses which go to make up pages 3, 4 and 5. You will notice the first sub-heading is "Gross Revenue from Operation". That is all of the money that the Com- [fol. 170] pany took in from the sale of gas and from miscellaneous operations, which includes revenue from gasoline extractions and some shop revenues (that is, doing some work around consumers' premises), some interest on miscellaneous investments and other miscellaneous income. The total has ranged from a minimum of $750,127 in 1922 to $907,024 in 1926, during which period the rate was 40¢. With the rate of 50¢ in 1926 the Company would have taken in $1,097,496. From that, of course, is to be deducted all the expenses of operation which follow in the next series of items under the caption appearing at the left of the sheet "Operating Expenses". Here you will find the field and main line expenses, which is all the cost of operation at the Menifee Field and the Red Bush Field for operating and maintaining the wells, running the distribution stations and running the main lines.

Counsel: These are actual disbursements taken from the books?

The Witness: Yes, sir; actual disbursements taken from the Company's books. The next item is, "Operating Ex-

penses", which includes all the actual cost of distribution in Lexington and in the other cities served. It includes reading the meters, and expenses of that general character. Then follows the general expenses which include officers' salary, increasing the business, running the plant, etc., and other expenses of that kind.

The fourth item is "Gas Purchased". That represents what the Company has paid for gas sold to the consumers at Lexington, Winchester, Mt. Sterling and Paris, and to the wholesale consumers.

We then have a total of operating expenses ranging from a minimum of $455,379 in 1922 up to a maximum of $570,- [fol. 171] 552 in 1924, predicated on the sale price of gas being 40¢. With gas selling at 50¢ the Company's operating expenses increased, because of the contract with the other Companies supplying them with gas being predicated on the price at which they sell it. As stated a while ago, the Bed Rock Petroleum Company charges them 30% of the average of the rate which they charge for gas in their district. So that with gas selling at 60¢, it would have to pay the Bed Rock Petroleum Company 18¢, selling at 40¢ it would only pay the Bed Rock Petroleum Company 12¢.

We will carry this down into the net revenue before any payment of taxes, and on the next line are the taxes which apply in those respective years. We then find the net operating revenue available for amortization, depletion, extraordinary maintenance, contingencies, interest and dividends on those figures appearing under the respective years at the figures brought forward appearing on pages 3, 4 and 5. For example, on page 3 you will find the corresponding item of $322,911 for the entire system, which is the same figure that appears for the year 1926 on statement on page 6 at the 40¢ rate. Similarly the item on page 4 was brought forward on this statement; and several items for each of the respective years on page 5; and come right forward to page 6.

To the right of this statement on page 6, under the caption "Lexington District", is the allocation of revenue and expenses in the urban and suburban districts of Lexington and under the heading, "Gross Revenue from Operations." Of course, only that part which was earned in Lexington was carried forward to that part of the sheet. Any earn-

ings in Winchester or Mt. Sterling or by any wholesalers [fol. 172] is not considered in the set up for the Lexington District. Following these sheets are the details which support all the figures thereof.

The next sheet is page 7, which shows the totals of the sales of gas. Taking the year 1926 for an illustration, you will note that opposite the caption, "Lexington Urban", which appears on the left of the sheet, and under the heading, "1926", you will find sales of 1,218,312 M. c. f.

* * * * * * *

And for that gas the Company received 40¢, which multiplied times the gas (by the cubic feet) means that the Company earned the gross sum of $487,991.

The next line is the same series of figures for the suburban district of Lexington and following under that you will find the corresponding figures for Winchester and Mt. Sterling; and still further down the sheet, the sales of gas to the Frankfort, Kentucky, Natural Gas Company, the Kentucky Utilities Company, the Blue Grass Natural Gas Company and others; also the Johnson County Gas Company, but that ceased to take gas from this Company in the year 1922. So that the total under the year 1926, based on the sale of gas at 40¢, was 2,312,309 M. c. f., at an average of 38.3¢, resulting in total receipts to the Company of $887,551.

In the next series of three columns under the caption, "1926-B" are what the Company would have earned if it had been permitted to retain all of the receipts at 50¢; and [fol. 173] that, in turn, results in the figure of $1,078,023. These figures correspond exactly with the figures on page 6 opposite, "Total Gas Sales". If you will look on that page on the entire system, for the year 1926, first at the 40¢ rate, you will find the figure of $887,551, which is the figure more fully detailed on page 7 and which I have just described.

On page 8 we show an allocation of that gross revenue to the Lexington District, and that simply involves assigning to the Lexington District all of the money earned in that District, which is the sales to the urban and suburban territory of Lexington. And at the bottom of that sheet we have assigned also to the Lexington District (although

the sales are not right in the District) we credit that District with the sales of gasoline, which is revenue derived from a Company which takes gas and extracts from it the gasoline content, and pays the Central Kentucky Company a fee for doing that, so we credit the Lexington District with revenue from that source to the extent of 56.42%, that being the ratio that you recall that I described a while ago to the sales in Lexington as compared to the total sales of the Company.

The next item is "Revenue from Shop Work", which is allocated on the basis that the number of meters in Lexington bear to the total number of meters owned by the Company, which is 73.41%. The gas sales are allocated on the basis of 56.42%. So, on that basis we have sums shown under the caption, "Lexington District", for each of the respective years, ranging from $433,949 in 1922, up to $540,906 in 1924, during which period the sale of gas was at the rate of 40¢; but if it had been at 50¢ the receipts applicable to the Lexington District for the year 1926 would [fol. 174] have been as shown in the last column, $664,530.

* * * * * * *

[fol. 175] Starting on page 10 is a brief statement as to the operating expenses, the details of which follow.

On page 11 are the "Field and Main Line Expenses", broken down into such details as the Company reports it. The major subdivisions of this property are "General", which includes "damages", "Cost of obtaining Leases, rentals, rentable land, royalties", and that class of expenses listed there; and the next subdivision is the expenses in connection with "wells"; the next one is in connection with the "Lines", both the field lines and the main lines, but not the distribution lines in the City. The next is "Pump Station", that is the compressor station.

The total of those expenses included in this set-up by Ford, Bacon & Davis are the amounts opposite that caption, which ranges from $34,159 in 1922, up to $52,265 in 1924.

* * * * * * *

[fol. 176] The next sheet, page 12, shows the total of the "City Plant Expenses". Those are the expenses in con-

nection with the distribution of gas at Lexington, Mt. Sterling and Winchester; and by that I mean in the urban and suburban districts of those places. This is subdivided into three major headings,—"Lines", "Shop" and "Office"; [fol. 177] and it shows the actual out of pocket expenses of the Company operating the Company under these three major subdivisions; and you will note towards the bottom of the sheet the title "City Plant Expenses" used by Ford, Bacon & Davis, which in 1922 were $47,476, and which increased to $61,900 in 1926.

Immediately below that is the "Plant Rental Expense" paid to the Lexington Utilities Company on each of those years, and any one referring to the Company's books would find the figure shown at the bottom of the sheet opposite the caption, "Total City Plant Expense per Company's Report", $97,858, which is inclusive of that rental, but which I have not included in the expenses since we have included the property with the Central Kentucky property on which the consumers should pay a return.

To the right of this sheet is the allocation to the Lexington District. Perhaps I should not have used the term "allocation", because these expenses are actual. The Company keeps the expenses of the Lexington property separate from the Mt. Sterling and Winchester property, so that these figures are actual and are not allocations.

Page 13 is a detail of the "General Expenses" of the Company, and you will note that these comprise salaries and expenses of officers and superintendents; general office expenses (salaries, transportation, etc.); private telephone and telegraph lines; that is, a portion of their private lines; repairs to the buildings, and miscellaneous expenses as shown; and the items included in this by Ford, Bacon & Davis are the amounts shown opposite that statement, and range from a minimum of $26,036 in 1923 to a maximum of $43,845 in 1925. The Company's books show that amount [fol. 178] at the bottom of that page. They included under the caption "General Expenses" interest and exchange, which I have taken out. They include taxes which I treat in a lump sum later. They include rate case expenses and appraisals, which involves and includes the fees paid to Ford, Bacon & Davis and attorneys, which I have deleted, and the reason I delete that expense is because I have in-

cluded in the valuation an allowance of $50,000.00 as the cost of obtaining the present franchise; therefore, you cannot naturally include it in the valuation and the expenses too.

Opposite "Interest and Exchange" there are amounts varying from $2,057 up to a maximum of $19,613. The Company, no doubt, has notes payable on which they have to pay interest. That is return on the property, and I am attempting to show how much revenue there is available for return and consequently I can't deduct that, for I would be mis-stating the facts if I did, and stated that the result was the amount available for return.

Under the sub-heading of "Adjustments" there are a few minor accounts here, such as "Bad Gas" and "Shop Accounts", amounting to a few hundred dollars a year, which the Company has been in the practice of charging off through their profit and loss account, and which I have included in the general expenses; so that, instead of my inclusion of $60,375 as general expenses shown under the year 1922 at the bottom of the sheet, I have used $29,820, and that figure has been carried forward to page 6, which is the general summary statements, and appears opposite the caption, "General Expenses."

On the right of this sheet are these expenses allocated [fol. 179] to the Lexington District. The salaries and expenses of the officers and superintendents have been allocated to the Lexington District in the same ratio we obtained for the summation of the "Field and Main Line Expense," shown on page 11, and the "City Plant Expense" shown on page 12. That resulted in assigning 57.96% of the salaries and expenses of the officers and superintendent to the Lexington District.

This same basis was used for allocating to the Lexington District the general office expenses and salaries, rent, stationery, etc., which figures the same percentage, 57.96%.

The telephone and telegraph lines is allocated in the proportion in which the sales of gas in Lexington bore to the sales of gas in the entire system, or 56.42%.

Similarly, the repairs to buildings was allocated on that same basis, to-wit, 56.42%.

Miscellaneous expenses here have been allocated on the basis of the other expenses, or 57.96%.

Interest on meter deposits, bad gas and shop accounts, and unclaimed meter deposits were all allocated in the proportion in which the consumers in the Lexington District bore to the consumers in the entire system.

The derivation of the percentage for allocated expenses is shown in the lower right-hand corner of page 13, where we have added up the "Field and Main Line Expenses", "Gas Purchased" and "City Plant Expenses" for the entire system, and we find that the expense assigned to Lexington was assigned in the ratio of 57.96%.

[fol. 180] On page 14 is the total of the cost to the Company of the gas which it has purchased from various producers for re-sale to the various consumers in Lexington, Mt. Sterling, Winchester and Paris, and this is set forth from 1922-1926, both inclusive. To illustrate that statement, on the left hand side of the sheet appear all the Companies from whom the Central Kentucky Company had purchased its supply of gas. The first one illustrated there is the "United Fuel Gas Company", which supplied 1,501,323 M. c. f. of gas during the year 1922, at a cost to the Central Kentucky Natural Gas Company of $260,247, which was an average of 17.3¢ per thousand cubic feet.

In the next year it supplied the amount shown there at an average of 20¢. That same condition prevailed for each of the succeeding years, and when you get to 1926, the United Fuel Gas Company supplied in that year 955,126 M. c. f. of gas at a cost of $191,025, based on the rate being paid of 40¢ in Lexington. If the Company had received the whole 50¢ which was charged the consumer, it would then have had to pay to the United Fuel Gas Company $238,781 or at the rate of 25.04¢. The contract with the United Fuel Gas Company calls for a payment to it equivalent to fifty per cent (50%) of the rate at which the gas is sold to consumers of the Company; so that with a 60¢ rate in Lexington the payment to the United Fuel Gas Company, under the contract, would be 30¢. Under the 40¢ rate, which did prevail, the payment to them was 20¢ per thousand cubic feet.

The next company under this schedule here which supplies gas is the "Kentucky Cities Gas Company". A footnote on page 15 describes in a general way the basis of pay-
[fol. 181] ment to these companies, under "Note A". I will state there that some of the purchased gas contracts

prescribe the price as a percentage of the sales price of gas; consequently, the cost of purchased gas is dependent on the sale price of it; in other words, upon the price at which the Central Kentucky Natural Gas Company distributes gas to its consumers is determined the price, under the contract, which it has to pay the producers. Under the contract with the United Fuel Gas Company the price of purchased gas is 50% of the selling price to the consumer. The contract with the Bed Rock Petroleum Company is 30%. The Kentucky Cities Gas Company contract as stated in this note, is in error, because a subsequent letter at the time it was written did not come to my attention, and where it states in this note that the "contract is 35% of the highest domestic rate, the purchase price per M. c. f. not to be less than 14¢", that should read that the Kentucky Cities Gas Company contract is 17½¢ plus ¼ of any increase of the domestic rate in excess of 40¢; so that with a 60¢ rate the Kentucky Cities Gas Company would be paid 17½¢ plus 5¢, or 22½¢.

The Hillsdale Gas Company's contract is 20¢ per M. c. f., plus ⅓ of any increase in the domestic rate over 40¢ per M. c. f. So that under that contract, under the 60¢ rate, the Central Kentucky Natural Gas Company would have to pay to the Hillsdale Gas Company ⅓ of 20¢, plus 20¢, or 26.7¢ per thousand cubic feet.

Now, the statement on page 14 shows the amounts in cubic feet and in dollars paid to each of the companies from whom the Central Kentucky Natural Gas Company bought its gas for those years; and you will note that they had purchased, for example, in the year 1922, 2,857,999 M. c. f. [fol. 182] of gas, at a total cost of $406,650, or an average of 14.2¢. Similarly, in 1926, predicated on a 50¢ rate in Lexington, they bought 2,607,861 M. c. f. of gas, at a total cost of $432,701, an average of 16.6¢. If they had paid for that gas on the basis of the 50¢ rate in Lexington, the cost would have been $509,794, or an average of 19.5¢. If the Company is granted the increase which it asks for it will have to reimburse these companies from whom it has bought the gas for the difference between what it did pay under the 40¢ rate, $432,701, and $509,794.

* * * * * * *

The next item on that sheet, under the title, "Gas Purchased", is the "Amount of Gas Stored in the Menifee Field". I have described heretofore how the Company lets the gas flow back into that field during the summer months and withdraws it in the winter months to meet the demand, and this is the excess in the summer over what is withdrawn in the winter. That isn't quite right. This is the total amount which is permitted to flow into the field. I see I have the amount of withdrawals in the next item.

Under the Company's accounting practice, it assumes that the gas which it permits to flow into that field is the lowest priced gas which it buys. In 1926 you will see that they paid all the way from 9.3¢ per thousand up to 13.4¢ per thousand — that it sold; and it has assumed that it will exhaust all the ten cent gas, and when that is exhausted it puts in the eleven cent gas, if it bought any at that rate, and the twelve cent, and so on, until it has put into the field all the lowest priced gas, and carries that as an asset. It could very easily assume that the field contained an average priced gas, but it has simply adopted that means [fol. 183] of accounting—

. . . . . .

And in accordance with their accounting, if the retail price of gas in Lexington has been 50¢, then the gas which was stored in the field would have represented an investment of $112,433, shown in the second column from the right, or an average of 14.3¢. Deducting the gas stored in the field then leaves the figures opposite the caption, "Net Available Purchased Gas", which, to use 1926 as an illustration, was 1,819,261 M. c. f., at a cost of $330,456, based on the 40¢ rate. In addition to that, the Company withdrew from the Menifee Field during the winter months, the amount of 473,968 M. c. f.,

. . . . . .

which stood them on their books $56,497, or an average of 11.9¢.

They produced in the Red Bush Field in the same year [fols. 184 & 185] 220,148 M. c. f., and inasmuch as we have included all of the expenses in connection with that production under the previous expenses of "Field and Main Line Expenses", there is no further additional expense included

here. So that the withdrawal from the Menifee Field and the production from the Red Bush Field in the year 1926 was 694,116 M. c. f., which made available for sale and use by the Company of 2,513,377 M. c. f. So that the gas available for sale and use as carried on the Company's statements to operating expenses amounted to $386,953 with gas selling in Lexington at 40¢. At 50¢ the operating expenses would have been, according to the Company, $453,858.

The Company in its measurement of gas withdrawn from the Menifee Field computes that amount based on the capacity of its compressor. It does not meter that gas, but that can be rather correctly computed through the capacity and hours of operation of that compressor. * * * Consequently I have made an adjustment and have added to the bottom of this statement, "Gas Withdrawn from Menifee Field for Use in Menifee Compressor Station," which was in the year 1926, 13,973 M. c. f. at an average cost of 11.9¢ per thousand cubic feet, or a total of $1,666. And I therefore carried as an operating expense in the year 1926 the figure at the bottom of the page, $388,619. That figure you will find on page 6 opposite the caption, "Gas Purchased" and with gas selling at 50¢ in Lexington, the corresponding figure would be $455,524.

* * * * * * *

[fols. 186-189] Pages 15 and 16 are merely notes in explanation of the statement on page 14, and I won't bother to go over all of them. They speak for themselves.

On page 17 is an allocation of the gas purchased to the Lexington District, and it is all done in the ratio that the sales in Lexington bear to the sales in the entire system.

Mr. Duncan: I will ask you, Mr. Kimball, to file with the Commission exhibit which I will ask to have identified as "Company Exhibit No. 6".

[fol. 189-a] [File endorsement omitted]

COMPANY EXHIBIT No. 6

[fol. 189-b] Estimate of Net Revenue Available for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., with Proposed Retail Rate of 60 Cent Minimum Charge, Including First 100 Cu. Ft. per Month; 6 Cents per 100 Cu. Ft. for Next 4,900 Cu. Ft. Per Month; 50 Cents Per M. c. f. for All Over 5,000 Cu. Ft. per Month

February 10, 1928

Ford, Bacon & Davis, Incorporated, Engineers, New York, Philadelphia, Chicago, San Francisco, New Orleans

[fol. 189-a-1] Estimate of net Revenue under the Proposed Rate Available for Return on Property of the Central Kentucky Natural Gas Company and Lexington Utilities Company, Inc.

February 10, 1928

This exhibit shows an estimate of the net revenue available for return on the property of the Central Kentucky Natural Gas Company, Inc., and the Lexington Utilities Company, Inc., based on the proposed rate of:

60 cents minimum charge including first 100 cubic feet per month;

6 cents per 100 cubic feet for the next 4,900 cubic feet per month; and

50 cents per M. c. f. for all over 5,000 cubic feet

The first statement shows the estimate and the succeeding statements contain the supporting detailed figures.

The estimate of gas sales, in cubic feet, is based on the number of consumers taking gas during the year 1927 and on the consumption per consumer during that year after making correction for temperature conditions and for decrease in sales resulting from the higher proposed rate.

The temperature during the winter months of the year 1927 was higher than the average with the result that the quantity of gas sold in that year was less than would have been the case if the temperature had been normal. It is estimated that with normal temperature the sales would have been 6 per cent greater.

Comparing the sales per consumer in 1926 and 1927 when the rate was 50 cents per M. c. f., with the sales per con- [fol. 189-a-2] sumer in each of the previous five years when the rate was 40 cents per M. c. f., and giving effect to differences in temperature, it is found that the increase in rate from 40 cents to 50 cents resulted in a decrease in the quantity of gas sold per consumer of from 11.9 per cent to 15.4 per cent. It is estimated that the proposed rate which will average about 60 cents per M. c. f., but which provides for a charge of 50 cents per M. c. f., for all over 5,000 cu. ft. per month, will result in a decrease of 7.5 per

cent in the sales of gas per consumer as compared with sales under the 50 cent flat rate. An increase from 50 cents to a flat rate of 60 cents no doubt would result in a larger reduction than 7.5 per cent.

Expenses are estimated at an average of the annual expenses for the years ended December 31, 1924, 1925 and 1926.

The estimated cost of gas purchased for resale is based upon existing purchase gas contracts. These include the contract with the Petroleum Exploration Company, Inc., which requires the Central Kentucky Company to take 750 million cubic feet per year at 40 cents per M. c. f. delivered at the Lexington City Gate. There are also contracts with the United Fuel Gas Company, Hillsdale Gas Company, Bed Rock Petroleum Company, Carroll Oil & Gas Company, Kentucky City Gas Company, and numerous smaller producers. The prices under many of these contracts are a function of the retail sales price of gas so that with an increase in rate there results also an increase in the cost of gas purchased.

In the estimates of expenses nothing has been included to cover the rental paid by the Central Kentucky Natural Gas Company, Inc., to the Lexington Utilities Company, [fol. 189-a-3] Inc., for the use of the latter's distribution system, inasmuch as the properties of these two companies have been included in the valuation on which the return is computed.

The annual allowance necessary for amortization, depletion, extraordinary maintenance and contingencies is based on amortizing the estimated cost of reproduction new less deterioration of the properties over a period of twenty years with interest accumulations at 3½ per cent. The extraordinary maintenance is an amount estimated to be necessary to keep the property in its present physical condition for the duration of its service life. The allowance for contingencies, $10,000 for the entire property and $5,600 allocated to Lexington, is included to insure the company against extraordinary loss from explosions and similar extraordinary charges.

Franchise and tangible property taxes are estimated at the average for the three years, 1924, 1925 and 1926. The Federal Income Tax is estimated at 13½ per cent of the net revenue after all charges except amortization.

Central Kentucky Natural Gas Company, Inc.

Estimate of Net Revenue Available for Return with proposed Retail rate of:
(a) 60 cent Minimum Charge, including first 100 cu. ft. per Month
(b) 6 cents per hundred cubic feet for next 4,900 cu. ft. per Month
(c) 50 Cents per M. c. f. for All over 5,000 cu. ft. per Month

	Entire system	Basis of allocation	Lexington district
Gross Revenue from Operations:			
Gas Sales:			
Lexington-Urban and Suburban	$691,670	Location	$691,670
Winchester and Mt. Sterling	235,891	"	.....
Wholesale Sales	194,755	"	.....
Total Gas Sales	$1,122,316		$691,670
Gasoline	9,251	Gas Sales—56.42%	5,220
Shop	4,942	Number of Meters—73.41%	3,628
Interest	555	Gas Sales—56.42%	314
Miscellaneous	787	Gas Sales—56.42%	444
Total Gross Revenue	$1,137,851		$701,276
Operating Expenses:			
Field and Main Line Expense	50,450	Gas Sales—56.42%	28,464
City Plant Expense	61,841	Location	41,946
General Expense	37,333	Other Expenses and consumers	21,839
Gas Purchased	673,250	Gas Sales—56.42%	379,848
Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	202,268		121,530
Total Operating Expense	$1,025,142		$593,627
Net Revenue before Taxes	$112,709		$107,649
Taxes	57,512		34,636
Net Revenue Available for Return	$55,197		$73,013

[fol. 189-a-5] Central Kentucky Natural Gas Company, Inc.

Estimated Gas Sales (M. c. f.) and Revenue for the Entire System and Proportion Allocated to Lexington District, Giving Effect of Proposed Retail Rate and Mean Temperature from 1906 to 1926, Inc.

	Entire system				Lexington district		
	Total sales (M. c. f.)	Average rate per M. c. f.	Revenue	Basis of allocation	Total sales (M. c. f.)	Average rate per M. c. f.	Revenue
Retail Sales:							
Lexington District	1,152,150	$.60	$691,670	Location	1,152,150	$.60	$691,670
Winchester	248,451	.60	149,071	"			
Mt. Sterling	144,700	.60	86,820	"			
Total Retail Sales	1,545,301		$927,561		1,152,150		$691,670
Wholesale Sales:							
Frankfort Ky. Nat. Gas Co	323,932	.35	113,376				
Ky. Utilities Co	166,590	.45	74,966				
Blue Grass Nat. Gas Co	14,251	.45	6,413				
Total Wholesale Sales	504,773		$194,755				
Total Sales	2,050,074		$1,122,316		1,152,150		$691,670

(Here follow side folios 189-a-6 and 189-a-7)

[fol. 189-a-6]

Central Kentucky Natural Gas Company, Inc.

Estimated Gas Sales (M. c. f.) and Revenue in Lexington District under proposed Rate of:
(a) 60 cents Minimum Charge including 100 cu. ft. per Month
(b) 6 cents per hundred cubic feet for next 4,900 cu. ft. per Month
(c) 50 cents per M. c. f. for All over 5,000 cu. ft. per Month

(This estimate is based on the actual number of consumers and gas sales for the year Ended Dec. 31, 1927, but correcting the sales to reflect mean temperature from 1906 to 1926, inclusive.)

Classification of bills rendered by amounts of gas billed (M. c. f.) (1)	No. of monthly bills rendered: Year ended Dec. 31, 1926 (2)	Per cent of total (3)	Year ended Dec. 31, 1927, prorated on 1926 percentages (4)	Estimated sales predicated on proposed rate and mean temperature 1906 to 1926, inclusive (M. c. f.) (5)	Estimated Gas Sales and Revenue by Classification of Bills Rendered: Minimum monthly charge of 60 cents, such minimum charge to include without further charge the first 100 cu. ft. of gas used — Gas sales (M. c. f.) (6)	Revenue (7)	Next 900 cu. ft. at 6 cents per 100 cu. ft. — Gas sales (M. c. f.) (8)	Revenue (9)	Next 4,000 cu. ft. at 60 cents per M. c. f. — Gas sales (M. c. f.) (10)	Revenue (11)	All over 5,000 cu. ft. at 50 cents per M. c. f. — Gas sales (M. c. f.) (12)	Revenue (13)	Total Revenue (14)
0	7,221	6.01%	7,418	.....	.....	$4,451	.....	.....	.....	.....	.....	.....	$4,451
1	7,435	6.19	7,638	7,638	763.8	4,583	6,874.2	$4,124	.....	.....	.....	.....	8,707
2	10,432	8.69	10,717	21,434	1,071.7	6,430	9,645.3	5,787	10,717	$6,430	.....	.....	18,647
3	10,701	8.91	10,994	32,982	1,099.4	6,596	9,894.6	5,937	21,988	13,193	.....	.....	25,726
4	9,476	7.89	9,735	38,940	973.5	5,841	8,761.5	5,257	29,205	17,523	.....	.....	28,621
5	7,874	6.56	8,089	40,445	808.9	4,854	7,280.1	4,368	32,356	19,414	.....	.....	28,636
6	6,959												
7	6,072												
8	5,196												
9	4,530	55.75	68,775	1,010,711(A)	6,877.5	41,265	61,897.5	37,139	275,100	165,060	666,836	$333,418	576,882
10	4,215												
11 to 15	15,909												
16 to 25	14,508												
over	9,557												
Total	120,085	100.00%	123,366	1,152,150	11,594.8	$74,020	104,353.2	$62,612	369,366	221,620	666,836	$333,418	691,670

Note—(A) Estimated Gas Sales to the Consumers taking 6 M. c. f. and over, i.e. (1,010, 711 M. c. f.), is the difference between the total estimated sales and the sales to the Consumers taking from 0 to 5 M. c. f.

Average Rate per M. c. f. (691,670÷1,152,150 M. c. f.)—$0.60.

Col. (6)—Col. (4) times 100 cu. ft.
Col. (7)—Col. (4) times 60 cents.
Col. (8)—Col. (4) times 900 cu. ft.
Col. (9)—Col (8) times 60c per M. c. f.
Col. (10)—Col. (1) minus 1,000 cu. ft. times Col. (4).
Col. (11)—Col. (10) times 60 cents per M. c. f.
Col. (12)—Col. (5) less Col. (4) times 5,000 cu. ft.
Col. (13)—Col. (12) times 50 cents per M. c. f.

[fol. 189-a-7]

Central Kentucky Natural Gas Company, Inc.

Total Gas Consumption, Number of Consumers, Consumption per Consumer, and Mean Monthly Temperature from 1920 to 1927, Inclusive, Lexington

Month	Mean temperatures, 1906 to 1926, inclusive	1920 Total consumption (M. c. f.)	1920 Number of consumers	1920 Consumption per consumer (M. c. f.)	1920 Mean temperature	1921 Total consumption (M. c. f.)	1921 Number of consumers	1921 Consumption per consumer (M. c. f.)	1921 Mean temperatures	1922 Total consumption (M. c. f.)	1922 Number of consumers	1922 Consumption per consumer (M. c. f.)	1922 Mean temperature
January	34.1°	149,858	6,622	22.6	30.1°	143,363	7,191	19.9	37.4°	158,109	7,607	20.8	
February	34.9	123,882	6,646	18.6	32.6	130,860	7,198	18.2	38.2	142,601	7,621	18.7	
March	44.3	127,566	6,667	19.1	44.7	113,408	7,223	15.7	54.6	140,679	7,652	18.4	
April	54.0	92,004	6,713	13.7	49.7	83,380	7,252	11.5	57.5	79,215	7,699	10.3	
May	63.5	64,995	6,724	9.7	62.4	62,879	7,270	8.6	64.9	60,318	7,727	7.8	
June	72.3	37,503	6,770	5.5	71.3	34,685	7,295	4.8	76.2	40,464	7,780	5.2	
July	75.8	30,897	6,812	4.5	74.4	29,170	7,343	4.0	80.2	34,864	7,812	4.5	
August	74.6	31,982	6,865	4.7	72.2	32,739	7,379	4.4	74.6	35,300	7,878	4.5	
September	69.5	36,014	6,935	5.2	69.9	34,627	7,430	4.7	73.2	39,164	7,965	4.9	
October	57.6	53,907	7,016	7.7	62.1	74,086	7,498	9.9	56.8	71,129	8,065	8.8	
November	45.1	109,899	7,083	15.5	43.3	106,650	7,555	14.1	48.0	102,163	8,133	12.6	
December	35.3	144,772	7,159	20.2	36.2	139,267	7,589	18.4	38.9	166,187	8,179	20.3	
Total		1,003,279	82,012	147.0		985,114	88,223	134.2		1,070,193	94,118	136.8	

Month	1924 Total consumption (M. c. f.)	1924 Number of consumers	1924 Consumption per consumer (M. c. f.)	1924 Mean temperature	1925 Total consumption (M. c. f.)	1925 Number of consumers	1925 Consumption per consumer (M. c. f.)	1925 Mean temperatures	1926 (A) Total consumption (M. c. f.)	1926 (A) Number of consumers	1926 (A) Consumption per consumer (M. c. f.)
January	201,355	8,980	22.4	29.5°	206,475	9,625	21.5	32.8°	207,650	10,055	20.7
February	178,716	9,002	19.9	33.4	154,368	9,650	16.0	43.0	153,859	9,965	15.4
March	179,041	9,036	19.8	39.1	146,768	9,670	15.2	46.6	178,242	9,986	17.8
April	119,005	9,053	13.1	54.9	98,254	9,691	10.1	59.2	138,464	9,719	14.2
May	89,107	9,102	9.8	58.2	83,471	9,723	8.6	59.8	77,403	9,735	8.0
June	52,650	9,157	5.7	73.0	49,492	9,737	5.1	75.8	48,845	9,730	5.0
July	41,785	9,214	4.5	73.2	39,853	9,743	4.1	75.0	39,435	9,743	4.0
August	38,687	9,265	4.2	75.1	39,105	9,798	4.0	76.2	36,229	9,781	3.7
September	50,883	9,387	5.4	63.7	38,212	9,838	3.9	76.2	42,474	9,891	4.3
October	76,366	9,488	8.0	62.4	92,497	9,964	9.3	50.2	73,050	10,003	7.3
November	112,337	9,569	11.7	45.0	140,283	10,012	14.0	43.2	142,957	10,056	14.2
December	185,181	9,605	19.3	34.0	186,240	10,034	18.6	31.8	165,294	10,101	16.4
Total	1,325,113	110,858	143.8		1,275,018	117,485	130.4		1,303,902	118,765	131.0

Note.—Number of Consumers used above is the total Meters on the gas ledger on the last day of the respective months; this represents the number of meter accounts less meters removed during the
Temperatures obtained from U. S. Dept. of Agriculture, Weather Bureau, Climatological Data for the State of Kentucky.
(A) Retail Rate in Lexington—50 cents per M. c. f.
(B) Retail Rate in Lexington—50 cents per M. c. f. until December when it was increased to 60 cents per M. c. f.

Central Kentucky Natural Gas Company, Inc.

Gas Consumption, Number of Consumers, Consumption per Consumer, and Mean Monthly Temperature from 1920 to 1927, Inclusive, Lexington District

1920			1921				1922				1923			
mber of umers	Consumption per consumer (M. c. f.)	Mean temperature	Total consumption (M. c. f.)	Number of consumers	Consumption per consumer (M. c. f.)	Mean temperatures	Total consumption (M. c. f.)	Number of consumers	Consumption per consumer (M. c. f.)	Mean temperatures	Total consumption (M. c. f.)	Number of consumers	Consumption per consumer (M. c. f.)	Mean temperature
,622	22.6	30.1°	143,363	7,191	19.9	37.4°	158,109	7,607	20.8	32.6°	177,190	8,253	21.5	39.1°
,646	18.6	32.6	130,860	7,198	18.2	38.2	142,601	7,621	18.7	38.2	167,585	8,328	20.1	31.6
,667	19.1	44.7	113,408	7,223	15.7	54.6	140,679	7,652	18.4	46.8	162,235	8,389	19.3	42.6
,713	13.7	49.7	83,380	7,252	11.5	57.5	79,215	7,699	10.3	57.0	123,930	8,396	14.8	53.3
,724	9.7	62.4	62,879	7,270	8.6	64.9	60,318	7,727	7.8	68.4	77,733	8,435	9.2	63.0
,770	5.5	71.3	34,685	7,295	4.8	76.2	40,464	7,780	5.2	74.6	45,279	8,492	5.3	74.0
,812	4.5	74.4	29,170	7,343	4.0	80.2	34,864	7,812	4.5	75.8	37,523	8,528	4.4	76.6
,865	4.7	72.2	32,739	7,379	4.4	74.6	35,300	7,878	4.5	74.7	38,377	8,584	4.5	74.4
,935	5.2	69.9	34,627	7,430	4.7	73.2	39,164	7,965	4.9	72.7	45,795	8,639	5.3	69.0
,016	7.7	62.1	74,086	7,498	9.9	56.8	71,129	8,065	8.8	61.0	80,339	8,771	9.2	56.2
,083	15.5	43.3	106,650	7,555	14.1	48.0	102,163	8,133	12.6	47.2	131,186	8,861	14.8	44.8
,159	20.2	36.2	139,267	7,589	18.4	38.9	166,187	8,179	20.3	39.1	153,910	8,915	17.3	45.2
,012	147.0		985,114	88,223	134.2		1,070,193	94,118	136.8		1,241,082	102,591	145.7	

1924			1925				1926 (A)				1927 (B)			
,980	22.4	29.5°	206,475	9,625	21.5	32.8°	207,650	10,055	20.7	32.0°	178,664	10,123	17.6	33.4°
,002	19.9	33.4	154,368	9,650	16.0	43.0	153,859	9,965	15.4	37.3	134,174	10,130	13.2	43.4
,036	19.8	39.1	146,768	9,670	15.2	46.6	178,242	9,986	17.8	39.7	134,741	10,161	13.3	47.8
,053	13.1	54.9	98,254	9,691	10.1	59.2	138,464	9,719	14.2	49.0	107,516	10,165	10.6	55.4
,102	9.8	58.2	83,471	9,723	8.6	59.8	77,403	9,735	8.0	64.6	77,790	10,171	7.6	63.4
,157	5.7	73.0	49,492	9,737	5.1	75.8	48,845	9,730	5.0	69.4	53,697	10,188	5.3	68.8
,214	4.5	73.2	39,853	9,743	4.1	75.0	39,435	9,743	4.0	76.8	39,834	10,201	3.9	75.2
,265	4.2	75.1	39,105	9,798	4.0	76.2	36,229	9,781	3.7	76.0	42,701	10,256	4.2	69.4
,387	5.4	63.7	38,212	9,838	3.9	76.2	42,474	9,891	4.3	71.4	48,246	10,357	4.7	72.2
,488	8.0	62.4	92,497	9,964	9.3	50.2	73,050	10,003	7.3	57.2	78,498	10,474	7.5	61.0
,569	11.7	45.0	140,283	10,012	14.0	43.2	142,957	10,056	14.2	40.8	111,718	10,527	10.6	49.7
,605	19.3	34.0	186,240	10,034	18.6	31.8	165,294	10,101	16.4	35.0	168,375	10,613	15.8	35.0
,858	143.8		1,275,018	117,485	130.4		1,303,902	118,765	131.0		1,175,954	123,366	114.3	

Meters on the gas ledger on the last day of the respective months; this represents the number of meter accounts less meters removed during the month plus all meters in service but idle during the month.
re, Weather Bureau, Climatological Data for the State of Kentucky.

til December when it was increased to 60 cents per M. c. f.

[fol. 189-a-8] Central Kentucky Natural Gas Company, Inc.

Calculation of Variation in Gas Consumption per Consumer per Degree Variation in Temperature—Retail Gas Sales at 40 cents per M. c. f.
Lexington District

	Actual Consumption per Consumer (Cu. Ft:)							
							1920 to 1925 Inc.	
Month:	1920	1921	1922	1923	1924	1925	Total	Average
January (Winter month)	22,600	19,900	20,800	21,500	22,400	21,500	128,700	21,450
February "	18,600	18,200	18,700	20,100	19,900	16,000	111,500	18,583
March "	19,100	15,700	18,400	19,300	19,800	15,200	107,500	17,917
April "	13,700	11,500	10,300	14,800	13,100	10,100	73,500	12,250
May	9,700	8,600	7,800	9,200	9,800	8,600	53,700	8,950
June (Summer month)	5,500	4,800	5,200	5,300	5,700	5,100	31,600	5,267
July "	4,500	4,000	4,500	4,400	4,500	4,100	26,000	4,333
August "	4,700	4,400	4,500	4,500	4,200	4,000	26,300	3,383
September "	5,200	4,700	4,900	5,300	5,400	3,900	29,400	4,900
October	7,700	9,900	8,800	9,200	8,000	9,300	52,900	8,817
November (Winter month)	15,500	14,100	12,600	14,800	11,700	14,000	82,700	13,783
December "	20,200	18,400	20,300	17,300	19,300	18,600	114,100	19,017
Total	147,000	134,200	136,800	145,700	143,800	130,400	837,900	139,650
Average	12,250	11,183	11,400	12,142	11,983	10,867	69,825	11,638
Total Consumption for Winter Months	109,700	97,800	101,100	107,900	106,200	95,400	618,000	103,000
Average Consumption for Winter Months	18,283	16,300	16,850	17,967	17,700	15,900	103,000	17,167
Total Consumption for Summer Months	19,900	17,900	19,100	19,500	19,800	17,100	113,300	18,883
Average Consumption for Summer Months	4,975	4,475	4,775	4,875	4,950	4,275	28,325	4,721
Difference (Assumed as Heating Load)	13,308	11,825	12,075	13,092	12,750	11,625	74,675	12,446
Temperature for Summer Months	287	304	299	294	285	393	1,772	295
Average Temperature for Summer Months	72	76	75	73	71	76	443	73.8
Temperature for Winter Months	237	275	261	257	236	257	1,523	254
Average Temperature for Winter Months	39	46	44	43	39	43	254	42.3
Difference in Average Temperature	33	30	31	30	32	33	189	31.5
Cu. Ft. per Degree in Temperature	403	394	389	436	398	352	2,372	395

(Here follow side folios 189-a-9 and 189-a-10)

[fol. 189-a-9]

Central Kentucky Natural Gas Company, Inc.

Consumption per Consumer, 1920 to 1925, Inclusive, Corrected According to Mean Monthly Temperature, with Gas Retailing at 40 cents per M. c. f.—Lexington District

Month	Mean temperature 1906 to 1926 inclusive (degrees)	1920 Temperature Actual	1920 Temperature Correction	1920 Consumption per consumer Actual (cu. ft.)	1920 Consumption per consumer Correction @ 400 cu. ft. per degree	1920 Consumption per consumer Corrected Total (cu. ft.)	1921 Temperature Actual	1921 Temperature Correction	1921 Consumption per consumer Actual (cu. ft.)	1921 Consumption per consumer Correction @ 400 cu. ft. per degree	1921 Consumption per consumer Corrected total (cu. ft.)	1922 Temperature Actual	1922 Temperature Correction	1922 Consumption per consumer Actual (cu. ft.)	1922 Consumption per consumer Correction @ 400 cu. ft. per degree
January (A)	34.1	30°	−4.1°	22,600	−1,640	20,960	37°	+ 2.9°	19,900	+ 1,160	21,060	33°	−1.1°	20,800	− 440
February (A)	34.9	33	−1.9	18,600	− 760	17,840	38	+ 3.1	18,200	+ 1,240	19,440	38	+3.1	18,700	+1,240
March (A)	44.3	45	+0.7	19,100	+ 280	19,380	55	+10.7	15,700	+ 4,280	19,980	47	+2.7	18,400	+1,080
April (A)	54.0	50	−4.0	13,700	−1,600	12,100	58	+ 4.0	11,500	+ 1,600	13,100	57	+3.0	10,300	+1,200
May	63.5	62	.....	9,700	.....	9,700	65	.....	8,600	.....	8,600	68	.....	7,800	.....
June (B)	72.3	71	.....	5,500	.....	5,500	76	.....	4,800	.....	4,800	75	.....	5,200	.....
July (B)	75.8	74	.....	4,500	.....	4,500	80	.....	4,000	.....	4,000	76	.....	4,500	.....
August (B)	74.6	72	.....	4,700	.....	4,700	75	.....	4,400	.....	4,400	75	.....	4,500	.....
September (B)	69.5	70	.....	5,200	.....	5,200	73	.....	4,700	.....	4,700	73	.....	4,900	.....
October	57.6	62	.....	7,700	.....	7,700	57	.....	9,900	.....	9,900	61	.....	8,800	.....
November (A)	45.1	43	−2.1	15,500	− 840	14,660	48	+ 2.9	14,100	+ 1,160	15,260	47	+ 1.9	12,600	+ 760
December (A)	35.3	36	+0.7	20,200	+ 280	20,480	39	+ 3.7	18,400	+ 1,480	19,880	39	+ 3.7	20,300	+1,480
Total				147,000	−4,280	142,720			134,200	+10,920	145,120			136,800	+5,320

Month	Mean temperature 1906 to 1926 inclusive (degrees)	1924 Temperature Actual	1924 Temperature Correction	1924 Consumption per consumer Actual (cu. ft.)	1924 Consumption per consumer Correction @ 400 cu. ft. per degree	1924 Consumption per consumer Corrected Total (cu. ft.)	1925 Temperature Actual	1925 Temperature Correction	1925 Consumption per consumer Actual (cu. ft.)	1925 Consumption per consumer Correction @ 400 cu. ft. per degree	1925 Consumption per consumer Corrected total (cu. ft.)	Consumption per Customer 1920 to 1925 inclusive Corrected Total (cu. ft.)	Annual Average (cu. ft.)
January (A)	34.1	30	−4.1	22,400	−1,640	20,760	33	− 1.1	21,500	− 440	21,060	127,260	21,210
February (A)	34.9	33	−1.9	19,900	− 760	19,140	43	+ 8.1	16,000	+ 3,240	19,240	114,540	19,090
March (A)	44.3	39	−5.3	19,800	−2,120	17,680	47	+ 2.7	15,200	+ 1,080	16,280	111,580	18,597
April (A)	54.0	55	+1.0	13,100	+ 400	13,500	59	+ 5.0	10,100	+ 2,000	12,100	76,700	12,783
May	63.5	58	.....	9,800	.....	9,800	60	.....	8,600	.....	8,600	53,700	8,950
June (B)	72.3	73	.....	5,700	.....	5,700	76	.....	5,100	.....	5,100	31,600	5,267
July (B)	75.8	73	.....	4,500	.....	4,500	75	.....	4,100	.....	4,100	26,000	4,333
August (B)	74.6	75	.....	4,200	.....	4,200	76	.....	4,000	.....	4,000	26,300	4,383
September (B)	69.5	64	.....	5,400	.....	5,400	76	.....	3,900	.....	3,900	29,400	4,900
October	57.6	62	.....	8,000	.....	8,000	50	.....	9,300	.....	9,300	52,900	8,817
November (A)	45.1	45	−0.1	11,700	− 40	11,660	43	− 2.1	14,000	− 840	13,160	82,860	13,810
December (A)	35.3	34	−1.3	19,300	− 520	18,780	32	− 3.2	18,600	− 1,320	17,280	119,380	19,897
Total				143,800	−4,680	139,120			130,400	+ 3,720	134,120	852,220	142,037

Note: (A) Winter Months
(B) Summer Months

Central Kentucky Natural Gas Company, Inc.

Consumption per Consumer, 1920 to 1925, Inclusive, Corrected According to Mean Monthly Temperature, with Gas Retailing at 40 cents per M. c. f.—Lexington District

mption sumer		1921					1922					1923				
		Temperature		Consumption per consumer			Temperature		Consumption per consumer			Temperature		Consumption per consumer		
ction cu. ft. egree	Corrected Total (cu. ft.)	Actual	Correction	Actual (cu. ft.)	Correction @ 400 cu. ft. per degree	Corrected total (cu. ft.)	Actual	Correction	Actual (cu. ft.)	Correction @ 400 cu. ft. per degree	Corrected Total (cu. ft.)	Actual	Correction	Actual (cu. ft.)	Correction @ 400 cu. ft. per degree	Corrected total (cu. ft.)
1,640	20,960	37°	+ 2.9°	19,900	+ 1,160	21,060	33°	−1.1°	20,800	− 440	20,360	39°	+ 4.9°	21,500	+ 1,960	23,460
760	17,840	38	+ 3.1	18,200	+ 1,240	19,440	38	+3.1	18,700	+1,240	19,940	32	− 2.9	20,100	− 1,160	18,940
280	19,380	55	+10.7	15,700	+ 4,280	19,980	47	+2.7	18,400	+1,080	19,480	43	− 1.3	19,300	− 520	18,780
1,600	12,100	58	+ 4.0	11,500	+ 1,600	13,100	57	+3.0	10,300	+1,200	11,500	53	− 1.0	14,800	− 400	14,400
.....	9,700	65	.....	8,600	.....	8,600	68	.....	7,800	.....	7,800	63	.....	9,200	.....	9,200
.....	5,500	76	.....	4,800	.....	4,800	75	.....	5,200	.....	5,200	74	.....	5,300	.....	5,300
.....	4,500	80	.....	4,000	.....	4,000	76	.....	4,500	.....	4,500	77	.....	4,400	.....	4,400
.....	4,700	75	.....	4,400	.....	4,400	75	.....	4,500	.....	4,500	74	.....	4,500	.....	4,500
.....	5,200	73	.....	4,700	.....	4,700	73	.....	4,900	.....	4,900	69	.....	5,300	.....	5,300
.....	7,700	57	.....	9,900	.....	9,900	61	.....	8,800	.....	8,800	56	.....	9,200	.....	9,200
840	14,660	48	+ 2.9	14,100	+ 1,160	15,260	47	+ 1.9	12,600	+ 760	13,360	45	− 0.1	14,800	− 40	14,760
280	20,480	39	+ 3.7	18,400	+ 1,480	19,880	39	+ 3.7	20,300	+1,480	21,780	45	+ 9.7	17,300	+ 3,880	21,180
4,280	142,720			134,200	+10,920	145,120			136,800	+5,320	142,120			145,700	+ 3,720	149,420

1925						Consumption per Customer 1920 to 1925 inclusive	
1,640	20,760	33	− 1.1	21,500	− 440	21,060	Corrected Total (cu. ft.) 127,260
760	19,140	43	+ 8.1	16,000	+ 3,240	19,240	114,540
2,120	17,680	47	+ 2.7	15,200	+ 1,080	16,280	111,580
400	13,500	59	+ 5.0	10,100	+ 2,000	12,100	76,700
.....	9,800	60	.....	8,600	.....	8,600	53,700
.....	5,700	76	.....	5,100	.....	5,100	31,600
.....	4,500	75	.....	4,100	.....	4,100	26,000
.....	4,200	76	.....	4,000	.....	4,000	26,300
.....	5,400	76	.....	3,900	.....	3,900	29,400
.....	8,000	50	.....	9,300	.....	9,300	52,900
40	11,660	43	− 2.1	14,000	− 840	13,160	82,860
520	18,780	32	− 3.3	18,600	−1,320	17,280	119,380
4,680	139,120			130,400	+ 3,720	134,120	852,220

Annual Average (cu. ft.)
21,210
19,090
18,597
12,783
8,950
5,267
4,333
4,383
4,900
8,817
13,810
19,897
142,037

[fol. 189-a-10]

Estimated Percentage Decrease in Gas Sales (Cubic Feet) per Consumer in the Lexington District Resulting from Increase in Retail Price of Gas from 40 Cents per M. c. f.

Month	Mean temperature 1906 to 1926 incl.	Average consumption per customer, 1920 to 1925, incl., based on mean temperature and gas selling at 40 cents per M. c. f. (cu. ft.)	1926 mean temperature	1906–1926 mean temperature variation from 1926 mean temperature	Consumption differential 400 cu. ft. per consumer per degree of temperature variation	Estimated average consumption per consumer based on 1926 temperature conditions and a rate of 40 cents per M. c. f. (cu. ft.)	Actual consumption per consumer in 1926 with a rate of 50 cents per M. c. f. (cu. ft.)	Per cent, decrease due to increase in rate from 40 cents to 50 cents per M. c. f.	1927 mean temperature	1906–1926 mean temperature variation from 1927 mean temperature	Consumption differential 400 cu. ft. per consumer per degree of temperature variation	Estimated average consumption per consumer based on 1927 temperature conditions at a rate of 40 cents per M. c. f. (cu. ft.)
January	34.1°	21,210	32.0°	+ 2.1°	+ 840	22,050	20,651	.....	33.4°	+ 0.7°	+ 280	21,4[illegible]
February	34.9	19,090	37.3	− 2.4	− 960	18,130	15,440	.....	43.4	− 8.5	− 3,400	15,6[illegible]
March	44.3	18,597	36.7	+ 7.6	+ 3,040	21,637	17,849	.....	47.8	− 3.5	− 1,400	17,1[illegible]
April	54.0	12,783	49.0	+ 5.0	+ 2,000	14,783	14,247	.....	55.4	− 1.4	− 560	12,2[illegible]
May	63.5	8,950	64.6	.....	.....	8,950	7,951	.....	63.4	.....	.....	8,9[illegible]
June	72.3	5,267	69.4	.....	.....	5,267	5,020	.....	68.8	.....	.....	5,2[illegible]
July	75.8	4,333	76.8	.....	.....	4,333	4,048	.....	75.2	.....	.....	4,3[illegible]
August	74.6	4,383	76.0	.....	.....	4,383	3,704	.....	69.2	.....	.....	4,3[illegible]
September	69.5	4,900	71.4	.....	.....	4,900	4,294	.....	72.2	.....	.....	4,9[illegible]
October	57.6	8,817	57.2	.....	.....	8,817	7,303	.....	61.0	.....	.....	8,8[illegible]
November	45.1	13,810	40.8	+ 4.3	+ 1,720	15,530	14,216	.....	49.7	− 4.6	− 1,840	11,9[illegible]
December	35.3	19,897	35.0	+ 0.3	+ 120	20,017	16,364	.....	35.0	+ 0.3	+ 120	20,0[illegible]
Total		142,037				148,797	131,087	11.9%				135,2[illegible]

Percentage Decrease in Gas Sales (Cubic Feet) per Consumer in the Lexington District Resulting from Increase in Retail Price of Gas from 40 Cents per M. c. f. to 50 cents per M. c. f.

1926 mean temperature	1906–1926 mean temperature variation from 1926 mean temperature	Consumption differential 400 cu. ft. per consumer per degree of temperature variation	Estimated average consumption per consumer based on 1926 temperature conditions and a rate of 40 cents per M. c. f. (cu. ft.)	Actual consumption per consumer in 1926 with a rate of 50 cents per M. c. f. (cu. ft.)	Per cent, decrease due to increase in rate from 40 cents to 50 cents per M. c. f.	1927 mean temperature	1906–1926 mean temperature variation from 1927 mean temperature	Consumption differential 400 cu. ft. per consumer per degree of temperature variation	Estimated average consumption per consumer based on 1927 temperature conditions and a rate of 40 cents per M. c. f. (cu. ft.)	Actual consumption per consumer in 1927 with a rate of 50 cents per M. c. f. (cu. ft.)	Per cent, decrease due to increase in rate from 40 cents to 50 cents per M. c. f.
32.0°	+ 2.1°	+ 840	22,050	20,651	.....	33.4°	+ 0.7°	+ 280	21,490	17,649	.....
37.3	− 2.4	− 960	18,130	15,440	.....	43.4	− 8.5	− 3,400	15,690	13,245	.....
36.7	+ 7.6	+ 3,040	21,637	17,849	.....	47.8	− 3.5	− 1,400	17,197	13,261	.....
49.0	+ 5.0	+ 2,000	14,783	14,247	.....	55.4	− 1.4	− 560	12,223	10,577	.....
64.6	.....	.....	8,950	7,951	.....	63.4	.....	.....	8,950	7,649	.....
69.4	.....	.....	5,267	5,020	.....	68.8	.....	.....	5,267	5,270	.....
76.8	.....	.....	4,333	4,048	.....	75.2	.....	.....	4,333	3,905	.....
76.0	.....	.....	4,383	3,704	.....	69.2	.....	.....	4,383	4,164	.....
71.4	.....	.....	4,900	4,294	.....	72.2	.....	.....	4,900	4,658	.....
57.2	.....	.....	8,817	7,303	.....	61.0	.....	.....	8,817	7,495	.....
40.8	+ 4.3	+ 1,720	15,530	14,216	.....	49.7	− 4.6	− 1,840	11,970	10,612	.....
35.0	+ 0.3	+ 120	20,017	16,364	.....	35.0	+ 0.3	+ 120	20,017	15,865	.....
			148,797	131,087	11.9%				135,237	114,349	15.4%

[fol. 189-a-11] Central Kentucky Natural Gas Company, Inc.

Estimated Gas Sales in Lexington District in Year 1927, Giving Effect to the Proposed Retail Rate and Mean Monthly Temperature of Years 1906 to 1926, Incl.

(This estimate is based on the actual number of consumers and gas sales for the year ended Dec. 31, 1927, but correcting the sales to reflect the mean temperatures)

Month	Total actual consumption 1927 (M. c. f.)	Actual number of consumers 1927 (A)	Actual consumption per consumer (cu. ft.)	Temperature			Corrected consumption per consumer based on 400/cu. ft. per degree of variation	Consumption	
				Mean 1906 to 1926 inclusive	Actual 1927	1927 variation from mean 1906 to 1926 temperature		Per consumer based on mean temperature 1906–1926 incl. (cu. ft.)	Total based on mean temperature 1906–1926 incl. (M. c. f.)
January (Winter month)	178,664	10,123	17,649	34.1	33.4	− 0.7	− 280	17,369	175,826
February "	134,174	10,130	13,245	34.9	43.4	+ 8.5	+ 6,400	16,645	168,614
March "	134,741	10,161	13,261	44.3	47.8	+ 3.5	+ 1,400	14,661	148,970
April "	107,516	10,165	10,577	54.0	55.4	+ 1.4	+ 560	11,137	113,208
May	77,790	10,171	7,648	63.5	63.4	.....	.....	7,648	77,790
June	53,697	10,188	5,270	72.3	68.8	.....	.....	5,270	53,697
July	39,834	10,201	3,905	75.8	75.2	.....	.....	3,905	39,834
August	42,701	10,256	4,164	74.6	69.4	.....	.....	4,164	42,701
September	48,246	10,357	4,658	69.5	72.2	.....	.....	4,658	48,246
October	78,498	10,474	7,495	57.6	61.0	.....	.....	7,495	78,498
November (Winter month)	111,718	10,527	10,612	45.1	49.7	+ 4.6	+ 1,840	12,452	131,082
December "	168,375	10,613	15,865	35.3	35.0	− 0.3	− 120	15,745	167,102
Total	1,175,954	123,366	114,349				+ 6,800	121,149	1,245,568

Estimated Decrease in Gas Sales (7.5%) due to increase of Retail Gas Rate from 50 cents per M. C. F. to minimum monthly charge of 60 cents including first 100 cu. ft.; 60 cents per M. c. f. for the next 4,900 cu. ft. and 50 cents per M. c. f. for all over 5,000 cu. ft. 93,418

Estimated Total Consumption Predicated on Increase of Retail Gas Rate and Mean Temperature of 1906 to 1926, incl. 1,152,150

Note.—(A) Meters carried on gas ledger at end of month.

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[fol. 189-a-12] Central Kentucky Natural Gas Company, Inc.

Estimated Gas Sales (M. c. f.) and Revenue from the Cities of Winchester and Mt. Sterling and from the wholesale consumers

(This estimate is based on the actual gas sales during the year ended December 31, 1927, but correcting the sales to reflect mean temperatures from 1906 to 1926, inclusive, and also correcting the sales to give effect to reduced consumption resulting from increased rate)

Retail Sales	Total actual sales year ended Dec. 31, 1927 (M. c. f.)	Correction (+6.0%) for mean temperature 1906 to 1926 incl. (M. c. f.)	Total actual sales year 1927 after correction for temperature (M. c. f.)	Correction (−7.5%) for proposed retail rate (M. c. f.)	Estimated total sales predicated on proposed retail rate and mean temperature 1906 to 1926 incl. (M. c. f.)	Proposed average rate per (M. c. f.)	Estimated revenue
Winchester	253,393	15,203	268,596	20,145	248,451	$0.60	$149,071
Mt. Sterling	147,577	8,855	156,432	11,732	144,700	.60	86,820
Total	400,970	24,058	425,028	31,877	393,151	.....	$235,891
Wholesale Sales							
Frankfort Ky. Natural Gas Co.	305,596	18,336	323,932	.....	323,932	.35(A)	113,376
Kentucky Utilities Co.	169,903	10,194	180,097	13,507	166,590	.45(B)	74,966
Blue Grass Natural Gas Co.	14,535	872	15,407	1,156	14,251	.45(C)	6,413
Total	490,034	29,402	519,436	14,663	504,773		194,755

Note.—(A) 35 cents per M. c. f. is Contract Sale Price to Frankfort Ky. Natural Gas Co. (70 per cent of Frankfort retail rate).

(B) Contract Price is 75 per cent of retail rate of City of Paris which retail rate at no time shall be considered for the purpose of determining this wholesale rate, less than in the City of Lexington.

(C) Contract price is 75 per cent of retail rate in towns supplied which retail rate at no time shall be considered for the purpose of determining this wholesale rate, less than the rate in the City of Lexington.

[fol. 189-a-13]

Central Kentucky Natural Gas Company, Inc.

Estimate of Revenue from Gasoline, Shop, Interest, and Miscellaneous

Source	Revenue years ended Dec. 31			Estimated revenue based on average of years 1924, 1925, and 1926		
	1924	1925	1926	Entire system	Basis of allocation	Lexington district (B)
Gasoline	$8,794	$7,724	$11,236	$9,251	Gas Sales	$5,220
Shop	6,356	2,378	6,091	4,942	No. of Meters	3,628
Interest	42	143(A)	1,481	555	Gas Sales	314
Miscellaneous	1,039	658	665	787	Gas Sales	444
Total	$16,231	$10,903	$19,473	$15,535	.....	$9,606

Note.—(A) Company's Books show $5,647; Ford, Bacon & Davis, Inc. deducted the Interest received from Hillsdale Gas Co., i.e. $5,504 which has been considered herein as non-operating revenue.

[fol. 189-a-14]

Central Kentucky Natural Gas Company, Inc.

Estimate of Field and Main-line Expenses, City Plant Expenses, and General Expenses

	Company's actual expenses, years ended Dec. 31			Estimated expense based on average year 1924, 1925, and 1926		
Field and Main Line Expense	1924	1925	1926	Entire system	Basis of allocation	Lexington district
General	$13,412	$14,089	$14,179			
Wells	3,145	6,050	7,762			
Lines	15,640	10,025	8,817			
Pumping Stations	20,068	20,112	18,053			
Total Field and Main Line Expense	$52,265	$50,276	$48,811	$50,450	Gas Sales $56.42 %	$28,464
City Plant Expense						
Lines	$9,971	$11,294	$9,187			
Shop	22,065	20,407	26,192			
Office	23,842	25,697	26,521			
Total City Plant Expense	$55,878	$57,398	$61,900	$61,841	Location (A)	$41,946
General Expense	35,752	43,845	32,401	37,333	Other Expenses and Consumers	21,839
Total	$143,895	$151,519	$143,112	$149,624	.....	$92,249

Note.—(A) The estimated City Plant expense i.e. $61,841 was obtained by multiplying the average number of consumers for the year 1927 by the average city plant expense per consumer for the years 1924, 1925 and 1926.

[fol. 189-a-15]

Central Kentucky Natural Gas Company, Inc.

Estimated Quantity and Cost of Gas Purchased

Name of company	Minimum quantity per contract (M. c. f.)	Estimated quantity of gas purchased (M. c. f.)	Contract price per M. c. f.	Estimated cost of gas purchased	Basis of contract price per M. c. f.
United Fuel Gas Co.	720,000	720,000	$0.30	$216,000	50 Per Cent of Average Domestic Rate
Petroleum Exploration Co., Inc.	750,000	750,000	.40	300,000	40 Cents per M. c. f. at Lexington City Gate
Hillsdale Gas Co.	720,000	450,000	.267	120,150	20 cents plus 1/3 of any increase over 40 cents per M. c. f.
Bed Rock Petroleum Co.	1,220,000	125,000	.18	22,500	30 per cent of Average Domestic Rate
Carroll Oil and Gas Co.	300,000	200,000	.10	20,000	10 cents per M. c. f.
Kentucky City Gas Co.	1,000,000	125,000	.225	28,125	17.5 Cents plus 25 per cent of increase over 40 cents per M. c. f.
Various Independent Producers		350,000	.10	35,000	10 cents per M. c. f.
Total Purchased Gas		2,720,000	$0.273	$741,775	
Red Bush Production		100,000			
Total Gas Purchased and Produced		2,820,000		$741,775	
Estimated Total Gas Sales		2,050,074			
Estimated Loss and Company Usage		205,007			
Total		2,255,081			
Gas Stored in Ground		564,919	$0.1213	$68,525	
Gas Purchased Account				$673,250	

[fol. 189-a-16]

Central Kentucky Natural Gas Co., Inc.

Estimate of Taxes for Entire System and Proportion Allocated to Lexington District

	Entire system	Basis of allocation	Lexington district
Franchise Taxes	$24,915(A)	Location	$14,620(A)
Tangible Property Taxes	12,390(A)	"	6,694(A)
Federal Income Tax	20,207	"	13,322
Total Taxes	$57,512		$34,636

Note.—(A) Average of Franchise and Tangible Property Taxes paid for the Years Ended Dec. 31, 1924, 1925, and 1926. See detail on following sheets.

[fol. 189-a-17]

Central Kentucky Natural Gas Company, Inc.

Estimate of Federal Income Tax, Franchise Tax, and Tangible Property Tax

	Entire system		Lexington district	
Gross Revenue		$1,137,851		$701,276
Less:				
Expenses—				
Field and Main Line	$50,450		$28,464	
City Plant	61,841		41,946	
General	37,333		21,839	
Gas Purchased	673,250	822,874	379,848	472,097
		$314,977		$229,179
Allowance of extraordinary Maintenance	33,474		21,262	
Rental Paid to Lexington Utilities Co., Inc.	79,520		79,520	
Other Taxes Paid	37,305(A)		21,314(A)	
Miscellaneous Deductions	15,000	165,299	8,400	130,496
Net Revenue		$149,678		$98,683
Federal Income Tax (13-½%)		20,207		$13,322

Note.—(A) Other Taxes Paid is an Average of the Years Ended Dec. 31, 1924 to 1926, inclusive

	Entire system			Lexington district		
Year	Franchise tax	Tangible property tax	Total	Franchise tax	Tangible property tax	Total
1924	$25,033	$9,158		$14,616	$4,812	
1925	28,426	13,395		16,737	7,320	
1926	21,286	14,616		12,507	7,949	
Average	$24,915	$12,390	$37,305	$14,620	$6,694	$21,314

[fol. 189-a-18]

Central Kentucky Natural Gas Co., Inc., Lexington Utilities Co., Inc.

Summary of Estimated Annual Allowance Necessary for Amortization, Depletion Extraordinary Maintenance and Contingencies

Estimated Annual Allowance Necessary for Amortization and Depletion	Entire system	Lexington, district
Central Kentucky Natural Gas Co., Inc.	$146,603	$82,477
Lexington Utilities Co., Inc.	12,191	12,191
Total	$158,794	$94,668
Estimated Annual Allowance Necessary for Extraordinary Maintenance		
Central Kentucky Natural Gas Co., Inc.	$25,090	$12,878
Lexington Utilities Co., Inc.	8,384	8,383
Total	$33,474	$21,262
Estimated Annual Allowance Necessary for Contingencies		
Central Kentucky Natural Gas Co., Inc.	$	$
Lexington Utilities Co., Inc.		
Total	$10,000	$5,600
Total Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	$202,268	$121,530

[fol. 190] The Witness: This sets forth what the Company may expect to do under the proposed rate of "60 cents minimum charge including first 100 Cu. Ft. per month; 6 cents per 100 Cu. Ft. for next 4,900 Cu. Ft. per month; and 50 cents per M. c. f. for all over 5,000 Cu. Ft. per month." Page 4 of this Exhibit summarizes all the figures contained [fol. 191] therein and shows an estimate of the net revenue available for the returns based on the proposed rate, that being the rate which has been filed with this Commission, as I understand it. This Exhibit shows the net revenue available for return in the entire system is $55,197, whereas for the Lexington District is $73,013. That may appear rather peculiar that they don't make as much on the entire property as they do in the Lexington District, but that results from the fact that they are selling wholesale gas at a loss; so, in allocating the revenues and expenses, in the allocation of the Lexington District, it takes out that loss and lets the Lexington District stand on its own feet.

* * * * * * *

To illustrate it as clearly as possible, the Frankfort, Kentucky, Natural Gas Company pays to the Central Kentucky Natural Gas Company 35¢ a thousand for gas at the Central Kentucky Natural Gas Company's Plant in Lexington; and the Central Kentucky Natural Gas Company in turn pays to the Petroleum Exploration Company 40¢ for gas delivered in Lexington.

* * * * * * *

Page 5 of Exhibit 6 is the supporting detail of the estimated revenue from gas sales; and for the entire system gross receipts are estimated at $1,122,316, sales being estimated to be 2,050,074 M. c. f. Of this amount 1,545,301 [fol. 192] M. c. f. are sold at retail, and 504,773 M. c. f. are sold at wholesale. The allocation then to the Lexington District is simply the first item on this statement, totaling $691,670, at the rate of 60¢, as will be shown in a few moments, is an average which results from the application of the proposed rate.

Page 6 is the detail supporting the estimate of $691,670 which appears on page 5, as being the revenue derived under the proposed rate in the Lexington District.

The first column on page 6 is merely a classification of the bills rendered monthly; for example, the first figure "0" means no gas; and the next figure "1" is bills for 1,000 cubic feet; and the next one is "2", bills for 2,000 cubic feet, etc.

In column 2 are the number of bills sent out by the Company during the year 1926 for each of the various amounts of gas shown in the first column. For example, 7,221 bills with no gas at all in the year 1926; 7,435 bills were submitted for 1,000 cubic feet, and 10,432 for 2,000 cubic feet, etc. The third column simply states the percentage of the bills in each of these classifications to the total; that is, 6.19% of the bills submitted in the year 1922 were for quantities of 1,000 cubic feet.

* * * * * * *

In the fourth column are the number of bills sent out during the year 1927. We know that there were 123,366 bills rendered in that year, but we didn't have the statistics

at the time this statement was filed from which we could determine the number which were sent out for the various [fol. 193] quantities of gas sold. Therefore we separated 123,366 for the year 1927 in the same proportion as applied in the year 1926; in other words, we applied the same percentages as shown in column 3 to the 123,366.

In column 5 is an estimate of the total sales of gas under the proposed rate, and the figure shown in the total 1,152,150 M. c. f. is my estimate of the amount of gas which will be sold in the Lexington District under this proposed rate, and I will show the derivation of that figure in a subsequent statement, but suffice for the moment to say that the 1,152,150 M. c. f. is correct. We will prorate that to the various classifications of consumers. In other words, of that amount of gas 7,638 M. c. f. will be sold to consumers talking 1,000 cubic feet per month; and 21,434 M. c. f. will be sold to consumers taking 2,000 cubic feet per month, and so on down the line to 1,010,711 M. c. f. that will be sold to the consumers taking in excess of 5,000 cubic feet per month.

The next columns 6 and 7, shows the amount of gas sold and the revenue derived under the minimum charge section of the rate which has been filed here, that charge being 60¢ which includes the first 100 cubic feet used by consumers during the month.

The consumers who take no gas at all, of which 7,418 are shown in column 4, are the estimated number in 1927 who would, under this proposed rate, pay to the Company 60¢, or a total of $4,451, under column 7. The consumers who take 1,000 cubic feet (namely, 7,638, shown in column 4, scond line) would pay to the Company a minimum charge [fol. 194] of 60¢ per month, or $4,583, and that payment would include 763.8 M. c. f. shown under column 6. That same computation is carried down so that near the bottom there would be, from consumers taking more than 5,000 cubic feet per month a revenue of $41,265, shown in column 7, which is the product of the 68,775 consumers in column 4, times 60¢; and those consumers would be given with that payment, without further charge, 6,877.5 M. c. f. which is the first 100 cubic feet that they burn; so that the total receipts under the minimum charge and based on the number of consumers taking gas in the year 1927 would be the total under column 7, or $74,020, and that would carry with

it, without further charge to the consumers, 11,594.8 M. c. f. during that year.

In the next two columns, Nos. 8 and 9, there is shown the gas sold and the revenue derived in the next step of this proposed rate, which is 6¢ per hundred for the next 900 cubic feet (6¢ per 100 cubic feet for the next 900 cubic feet). Under this classification, of course, the consumer who burns no gas at all gets no bill for any gas. The consumers who burn 1,000 cubic feet (namely 7,638, shown in column 4) would pay for 900 cubic feet of that gas at the rate of 6¢ per hundred, or 54¢, and that times 7,638 would result in the figure of $4,124, which includes this 6,874.2 M. c. f. during the year.

Similarly, the consumers who burn in excess of 5,000 cubic feet per month (68,775, shown in column 4) would pay for 900 cubic feet of that, which totals up 61,897.5 M. c. f., shown in column 8, at the rate of 6¢, which times that 61,897.5 is $37,139. That, under this step is the rate that the Company would receive from the sale of gas, the total shown in column 9, $62,612, which would include the [fol. 195] sale of 104,353.2 M. c. f.

The next step in the rate calls for the next 4,000 cubic feet at the rate of 60¢ per cubic thousand; in other words; all in excess of 1,000 and up to 5,000 is billed at the rate of 60¢ per thousand. Of course the consumer who burns less than a thousand is not in that classification, nor is the consumer who burns over 5,000 a month in that classification; but the consumer who burns 2,000 cubic feet in a month falls in that class in that he gets over his first 1,000 and must pay 60¢ for his second thousand. Taking for example the 10,717, consumers who burn 2,000, and that is set forth in column 4, they would take, under the third step in the rate, a total of 10,717 M. c. f., which is the product of 1,000 times the consumers in column 4, and for that gas they would pay at the rate of 60¢ per thousand, which would result in a total of $6,430, shown in column 11, for those consumers.

The same computation is shown for each of the other class of consumers, so that the total revenue to be derived as shown in the total of column 11 is $221,620, which includes the sale of 369,366 M. c. f. * * *

The last step in the rate is 50¢ for all gas sold or consumed in the month in excess of 5,000 cubic feet. There

are, as shown in column 4, 68,775 consumers who take in excess of 5,000 cubic feet. Multiply that number of consumers by 5,000 cubic feet, and deducting the resulting figure from the 1,010,711 M. c. f. shown in column 5, results in the figure 666,836 M. c. f., shown in column 12, and that is the amount of gas which the Company would sell and derive a revenue of 50¢ per 1,000 for, which is equal to [fol. 196] $333,418.

In column 14 is shown the sum of the receipts in the sale of gas under this proposed rate, and the figures in that column are the sum of the figures in columns 7, 9, 11 and 13, and adding up that series of figures results in $691,670, under the application of this proposed rate. That figure divided by the estimated sales shown in the total of column 5 (1,152,150 M. c. f.) results in an average in the application of this rate of 60¢ per thousand.

* * * * * * *

Well, the statement on page 7 shows, for the years 1920 to 1927 inclusive, the actual sales of gas in the Lexington District by months, the numbers of consumers at the end of each month and the consumption per consumer for each of those months and also the average temperatures in Lexington in each of those months. The first column shows the mean temperature from 1906 to 1926, so that the comparison can be shown of the average or mean temperature for any of those years. The rate during this period was 40¢ per thousand for all consumers, except in 1926, when they had to pay 50¢, and except in December, 1927, when it was increased to 60¢.

* * * * * * *

Page 8 is an estimate of the effect of temperature on the consumption of gas. Our conclusion, based on the increase [fol. 197] there, is that for every degree rise in temperature during the winter months, there is a decrease in the sale of gas quivalent to 400 cubic feet per month per consumer. That means the figure shown in the extreme lower right hand side of the statement, 395; I call it in round figures 400.

Statement on page 9 corrects the consumption of natural gas in each of those respective years to what it would be if

the temperature in those years had been average normal temperature; in other words, it eliminates the temperature factor.

Statement number 10 shows what the effect has been on the sale of gas through the increase from 40¢ per thousand to 50¢ per thousand, and in the 8th column the conclusion is that when the price of gas was increased from 40¢ to 50¢, it resulted in 1926 in a decrease of 11.9% in the sale of gas per consumer. Similarly in 1927 a decrease in the sale of gas is shown at the extreme right of the table, through the increase in the rate was 15.4%. As the price of a commodity increases, you don't sell as much of the commodity; people conserve it, and that must be taken into consideration. Naturally if the decreased consumption more than offset the increase in rate, it would be to the Company's disadvantage to increase the rate, but that hardly prevails, as the sales do not drop off as rapidly as the rate goes up.

* * * * * * *

On page 11 is shown my estimate of the amount of gas which would be sold under this rate, and that is figured on the lower right hand corner of that sheet (1,152,150 M. c. f.), which would be sold in the Lexington District under the proposed schedule, and that is the figure which I referred [fol. 198] to in discussing page 6 under column 5, under that statement.

Page 12 is an estimate of the revenue from the sale of gas in Winchester and Mt. Sterling and to the wholesale consumers, corrected, as giving effect to the temperature conditions and to the decrease in sales resulting from the increase in rate.

Page 13 is an estimate of the revenue from gasoline, shop and miscellaneous sources, and that estimate is based solely on an average of the three years, 1924-1926 inclusive, as what it will probably continue to be.

Page 14 is an estimate of expenses under the proposed rate and is the average for the years 1924-1926, inclusive, except in the instance of the city plant expenses, which gives effect to the increasing number of consumers, the city plant expense being the average number of consumers for 1927 multiplied by the average city plant expense per consumer for the years 1924, 1925 and 1926.

The statement on page 15 is an estimate of the cost of gas under the proposed rate; and this statement will answer, I believe, Mr. Chairman, what the Company will pay under this proposed rate.

Statement number 16 is an estimate of the taxes which would apply.

Statement number 17 is the total underlying estimate of Federal Income Tax and the Franchise and Tangible Property Tax.

Statement number 18 is the estimate of the annual allowance necessary for amortization, depletion, extraordinary maintenance and contingencies; and that statement has been fully explained in my discussion of Company Exhibit No. 4, page 28 hereof.

* * * * * * *

Mr. Duncan: In your judgment, what represents a fair [fol. 199] rate of return on the invested capital of a natural gas utility, assuming that, with the proper rate, it will produce that return?

The Witness: In my opinion, it should not be less than 10% on a natural gas utility.

Mr. Duncan: Why is that?

The Witness: On other utilities, which are continuing in operation, seven percent or eight percent is considered a reasonable return by courts and commissions. The natural gas business, however, is a more hazardous enterprise, and the man who will put his money in there is entitled to a higher rate of compensation than the man that puts it in an electric utility or some similar one, which is not subject to the same hazard.

Hearing April 26, 1928

* * * * * * *

The Witness: At the last hearing we presented an Exhibit No. 4, which showed the earnings and expenses for the years 1922-1926, inclusive, and at that time I believe it was stated that we would supplement that Exhibit with one showing the earnings and expenses for the year 1927, and I have prepared such an Exhibit to be filed at this time.

[fol. 199-a] [File endorsement omitted]

COMPANY EXHIBIT No. 8

[fol. 199-b] Net Revenue Avaliable for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., Based on Operating Reports of the Central Kentucky Natural Gas Company, Inc., for the Year 1927

April 17, 1928

Ford, Bacon & Davis, Incorporated, Engineers, New York, Philadelphia, Chicago, San Francisco, New Orleans

[fol. 199-a-1] Net Revenue Available for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., Based on Operating Reports of the Central Kentucky Natural Gas Company, Inc., for the Year Ended December 31, 1927

April 17, 1928

The following statements show the revenue of the Central Kentucky Natural Gas Company, Inc. available for return on the combined property of the Central Kentucky Natural Gas Company, Inc. and the Lexington Utilities Company, Inc. for the year ended December 31, 1927, together with supporting figures. The Central Kentucky Natural Gas Company, Inc. leases the property of the Lexington Utilities Company, Inc.—which consists of the distribution system inside the corporate limits of the City of Lexington—and operates this distribution system as a part of the Central Kentucky Natural Gas Company's system. In the following statements, the rental paid to the Lexington Company by the Central Company, (12.5 per cent of the gross earnings in Lexington less $1,250 per year) has been excluded from the expenses of the latter.

The term, "Lexington District" as used in the various statements, includes the suburbs of the City as well as the City proper.

[fol. 199-a-2] In 1927, excepting the month of December, when a rate of 60 per M. c. f. was put into effect, the Central Kentucky Natural Gas Company, Inc. retailed gas at 50 cents per M c. f. Ten cents of both the 50 cent and 60 cent rates were impounded pending settlement of rate controversy.

The Company has prepared two annual reports, one of which shows what the Company actually did receive, that is the amount which was impounded was not included, and the other shows what the Company would have earned if it had been permitted to retain all of the receipts. Gas Purchase contracts, in a number of instances, fix the price of gas sold to the Central Kentucky Natural Gas Co. Inc., as a function of the retail selling price of gas sold by the Central Company, and therefore a change in the retail selling price of gas affects the expenses as well as the revenue.

The income and expenses for the year 1927, for the Entire System and the proportion allocated to the Lexington District, are shown in the following statements, based on including and excluding the 10 cents per M. c. f. which was impounded.

The pages following show:

(a) Net Revenue Available for Return.

(b) Summary of Revenue and Expenses.

(c) Details of Gross Revenue.

(d) Details of Expenses and Gas Purchased.

(e) Summary of Estimated Annual Allowance necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies.

[fol. 199-a-3] Unless stated otherwise, the gas sales (M. c. f.) and the revenue and expenses tabulated on the following statements were taken from the books and/or reports of the Central Kentucky Natural Gas Company, Inc.

[fol. 199-a-4]

Net Revenue of Central Kentucky Natural Gas Co., Inc., Available for Return on Property of Central Kentucky Natural Gas Co., Inc., and Lexington Utilities Co., Inc., for the Year 1927, with Retail Gas Sales at 40 Cents per M. c. f. for First Eleven Months and 50 Cents per M. c. f. for Last Month

	Entire system	Lexington district
Net Operating Revenue Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends	$228,471	$145,345
Deduct: Estimated Annual Allowance necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	202,268	121,530
Net Revenue Available for Return	$26,203	$23,815
Per Cent Return based on the Estimated Cost of Reproduction New Less Observed Deterioration as of December 31, 1927	0.59%	0.85%

[fol. 199-a-5]

Net Revenue of Central Kentucky Natural Gas Co., Inc., Available for Return on Property of Central Kentucky Natural Gas Co., Inc., and Lexington Utilities Co., Inc., for the Year 1927, with Retail Gas Sales at 50 Cents per M. c. f. for First Eleven Months and 60 Cents per M. c. f. for Last Month

	Entire system	Lexington district
Net Operating Revenue Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends	$321,045	$219,837
Deduct: Estimated Annual Allowance necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	202,268	121,530
Net Revenue Available for Return	$118,777	$98,307
Per Cent Return based on the Estimated Cost of Reproduction New Less Observed Deterioration as of December 31, 1927	2.69%	3.52%

[fol. 199-a-6] Revenue and Expense Statement for Entire System and Proportion Allocated to Lexington District, Year Ended December 31, 1927

	Entire system		Lexington District	
	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month
Gross Revenue from Operation:				
Gas Sales:				
Lexington—Urban and Suburban	$489,068	$606,615	$489,068	$606,615
Winchester and Mt. Sterling	164,911	203,390	.....	.....
Wholesale sales	164,315	176,278	.....	.....
Miscellaneous Gas Sales	525	525	297	297
Total Gas Sales	$818,819	$986,808	$489,365	$606,912
Gasoline	8,499	8,499	4,802	4,802
Shop	901	901	509	509
Interest	427	427	241	241
Miscellaneous	691	691	390	390
Total Gross Revenue	$829,337	$99[illegible]	$495,307	$612,854
Operating Expenses:				
Field and Main Line Expense	58,449	58,449	33,024	33,024
City Plant Expense	67,357	67,357	47,681	47,681
General Expense	27,922	27,922	16,596	16,596
Gas Purchased	404,090	477,350	228,311	269,703
Total Operating Expense	$557,818	$631,078	$325,612	$367,004
Net Revenue before Taxes	271,519	366,248	169,695	245,850
Taxes	43,048	45,203	24,350	26,013
Net Operating Revenue, Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends	$228,471	$321,045	$145,345	$219,837

[fol. 199-a-7] Allocation of Gross Revenue of the Entire System to the Lexington District, Year Ended December 31, 1927

	Entire system			Lexington District	
	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month	Basis of allocation	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month
Gross Revenue from Operations:					
Gas Sales:					
Lexington—Urban	$453,612.68	$562,626.87	Location	$453,612.68	$562,626.87
" —Surburban	35,455.62	43,987.94	"	35,455.62	43,987.94
Total Lexington District	$489,068.30	$606,614.81		$489,068.30	$606,614.81
Winchester	104,670.62	129,897.71			
Mt. Sterling	60,240.31	73,491.94			
Total Retail Sales	$653,979.23	$810,004.46		$489,068.30	$606,614.81
Wholesale Sales:					
Frankfort Ky. Natural Gas Co	$106,958.60	$106,958.60			
Kentucky Utilities Co	52,839.98	63,713.61			
Blue Grass Natural Gas Co	4,516.50	5,606.61			
Total Wholesale Sales	$164,315.08	$176,278.82		.....	.....
Miscellaneous Gas Sales	525.00	525.00	Gas Sales	296.63	296.63
Total Gas Sales	$818,819.31	$986,808.28		$489,364.93	$606,911.44
Gasoline	8,499.41	8,499.41	Gas Sales	4,802.17	4,802.17
Shop	901.05	901.05	"	509.09	509.09
Interest	427.19	427.19	"	241.36	241.36
Miscellaneous	690.83	690.83	"	390.32	390.32
Total Gross Revenue	$829,337.79	$997,326.76		$495,307.87	$612,854.38

[fol. 199-a-8] Retail and Wholesale Gas Sales for the Year 1927, Showing Quantity, Average Rate per M. c. f., and Revenue

	At 40 cents per M. c. f. for first eleven mo. and 50 cents for last month			At 50 cents per M. c. f. for first eleven mo. and 60 cents for last month		
	M. c. f.	Amount	Rate	M. c. f.	Amount	Rate
Retail Sales:						
Lexington—Urban	1,090,631.5	$453,612.68	$0.4159	1,090,631.5	$562,626.87	$0.5159
" —Suburban	85,323.2	35,455.62	.4155	85,323.2	43,987.94	.5155
Total Lexington District	1,175,954.7	$489,068.30	$0.4159	1,175,954.7	$606,614.81	$0.5158
Winchester	253,393	$104,670.62	$.4131	253,393	$129,897.71	$.5126
Mt. Sterling	147,577	60,240.31	.4082	147,577	73,491.94	.4980
Total Retail Sales	1,576,924.7	$653,979.23	$0.4147	1,576,924.7	$810,004.46	$0.5137
Wholesale Sales:						
Frankfort Ky. Natural Gas Co	305,596	$106,958.60	$.3500	305,596	$106,958.60	$.3500
Kentucky Utilities Co	169,903	52,839.98	.3110	169,903	63,713.61	.3750
Blue Grass Natural Gas Co	14,535	4,516.50	.3107	14,535	5,606.61	.3857
Total Wholesale Sales	490,034	$164,315.08	$0.3353	490,034	$176,278.82	$0.3597
Miscellaneous Gas Sales	3,500	525.00	.1500	3,500	525.00	.1500
Total Gas Sales	2,070,458.7	$818,819.31	$0.3955	2,070,458.7	$986,808.28	$0.4766

[fol. 199-a-9]

Calculation of Percentages used in the Allocation of Revenue, Expenses and Taxes to Lexington District based on Company's Gas Sales
(Average of Years 1923 to 1927, inclusive)

	1923	1924	1925	1926	1927	1923 to 1927, incl. Total	1923 to 1927, incl. Average	Percentage Used in Allocation
Retail Sales—M. c. f.:								
Lexington—Urban	1,178,656	1,235,613	1,166,131	1,218,312	1,090,631	5,889,343	1,177,869	.....
Lexington—Suburban	62,426	89,500	108,887	85,590	85,323	431,726	86,345	.....
Total Lexington District	1,241,082	1,325,113	1,275,018	1,303,902	1,175,954	6,321,069	1,264,214	56.50%
Winchester	285,787	304,017	277,585	295,304	253,393	1,416,186	283,237	12.66
Mt. Sterling	164,003	173,056	161,849	177,926	147,577	826,411	165,282	7.39
Total Retail Sales	1,690,872	1,802,186	1,716,552	1,777,132	1,576,924	8,563,666	1,712,733	.....
Wholesale Sales—M. c. f.:								
Frankfort Ky. Natural Gas Co.	321,829	339,933	317,067	331,847	305,596	1,616,272	323,254	.....
Kentucky Utilities Co	174,537	210,642	187,373	189,145	169,903	931,600	186,320	.....
Blue Grass Natural Gas Co.	15,690	15,793	14,750	14,185	14,535	74,953	14,991	.....
Total Wholesale Sales	512,056	566,368	519,190	535,177	490,034	2,622,825	524,565	23.45
Total Gas Sales	2,202,928	2,368,554	2,235,742	2,312,309	2,066,958	11,186,491	2,237,298	100.00%

[fol. 199-a-10] Operating Expenses

The pages immediately following show in detail the operating expenses, namely, the Field and Main Line, the City Plant and General Expenses of the Central Kentucky Natural Gas Co., Inc. for the year ended December 31, 1927 as reported by the Company and as adjusted by Ford, Bacon & Davis, Inc.

The Field and Main Line Expenses of the Entire System are allocated to the Lexington District on the ratio of gas sales in that district to the total gas sales of the Company. This ratio is 56.5 per cent as shown on a preceding page.

The City Plant Expense required no allocation as the actual expenses of the Lexington District are taken from the Company's records.

Items of General Expense are allocated on various bases shown on the detailed statement.

Gas production and purchases are taken from the Company's records, with minor adjustments as shown on the detail sheet following. The gas purchased account is allocated to the Lexington District on the basis of gas sales, that is 56.5 per cent.

Field and Main Line Expense—Entire System and proportion Allocated to Lexington District; also Reconciliation of Company's Expenses with those used by Ford, Bacon & Davis, Inc., for Year Ended December 31, 1927

Classification	Entire System		Basis of allocation	Lexington District	
	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month		At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month
General:					
Damages	$101.28	$101.28			
Cost of Obtaining Leases, Paying Rentals, etc	939.83	939.83			
Rentals, Land	191.52	191.52			
Royalties, Well	7,352.50	7,352.50			
Salaries and Expenses of Field Supt. and Foremen	8,052.37	8,052.37			
Telephone and Telegraph Repairs	1,023.19	1,023.19			
Tools and supplies	163.88	163.88			
Total	$17,824.57	$17,824.57			
Wells:					
Operating Wells	1,797.68	1,797.68			
Repairs—Labor, Teaming and Freight	2,217.81	2,217.81			
Repairs—Material	223.67	223.67			
Total	$4,239.16	$4,239.16			
Lines:					
Changing Construction	439.33	439.33			
Operating Lines	5,775.01	5,775.01			
Repairs—Labor, Teaming and Freight	1,799.63	1,799.63			
Repairs—Material	367.37	367.37			
Measuring Stations	2,404.50	2,404.50			
Total	$10,785.84	$10,785.84			
Pump Stations:					

Operating—Labor, Teaming and Freight	9,989.16	9,989.16			
Operating—Material	2,461.31	2,461.31			
Repairs—Labor, Teaming and Freight	3,633.35	3,633.35			
Repairs—Material	9,515.27	9,515.27			
Total	$25,599.09	$25,599.09			
Total Field and Main Line Expenses used by Ford, Bacon & Davis, Inc.	$58,448.66	$58,448.66	Gas Sales	$33,023.49	$33,023.49
Add:					
Taxes (A)	9.75	9.75			
Cost of Gas Used as Fuel (B)	4,696.70	4,696.70			
Total Additions	$4,706.45	$4,706.45			
Total Field and Main Line Expenses per Company's Reports	$63,155.11	$63,155.11			

NOTE.—(A) Taxes are shown as a separate item on attached statement and therefore deducted from expenses.
(B) Cost of Gas used in Compressing Stations is debited to Expense and credited to revenue on the Company's Books; Ford, Bacon & Davis, Inc., exclude it from both.

[fol. 199-a-12]

City Plant Expense, Entire System and Lexington District; also Reconciliation of Company's Expenses with Those Used by F. B. & D., Inc. for Year Ended December 31, 1927

Lines: Classification	Entire System		Lexington District (B)	
	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month
Changing Construction	$550.37	$550.37	$69.25	$69.25
Main to Curb	780.39	780.39	396.21	396.21
Operating Lines	263.99	263.99	−1,924.43	−1,924.43
Repairs—Labor, Teaming and Freight	7,159.47	7,159.47	6,628.05	6,628.05
Repairs—Material	4,334.24	4,334.24	4,335.44	4,335.44
Total	$13,088.46	$13,088.46	$9,504.52	$9,504.52
Shop				
Connecting, Disconnecting and Reading Meters	$10,050.00	$10,050.00	$7,105.56	$7,105.56
General Labor	6,966.74	6,966.74	5,031.04	5,031.04
Repairs of Meters	5,573.13	5,573.13	4,155.81	4,155.81
Tools and Supplies	1,653.31	1,653.31	1,297.38	1,297.38
Total	$24,243.18	$24,243.18	$17,589.79	$17,589.79
Office:				
Miscellaneous	$834.58	$834.58	$756.12	$756.12
Rent, Heat, Light, etc	4,966.50	4,966.50	3,381.46	3,381.46
Salaries—Agents and Clerks	20,175.70	20,175.70	13,443.23	13,443.23
Stationery and Supplies	4,048.45	4,048.45	3,006.30	3,006.30
Total	$30,025.23	$30,025.23	$20,587.11	$20,587.11
Total City Plant Expenses Used by F. B. & D. Inc	$67,356.87	$67,356.87	$47,681.42	$47,681.42
Add:				
Plant Rental Expense (A)	55,451.59	69,049.51	55,451.59	69,049.51
Total City Plant Expenses per Company's Reports	$122,808.46	$136,406.38	$103,133.01	$116,730.93

NOTE.—(A) This item is the rental for the use of the Distribution System Property of the Lexington Utilities Co. Inc., located in the City of Lexington. Ford, Bacon & Davis, Inc. treated this property as though it were a part of the Central Co. System and therefore deducted the rental from Expense.

(B) These Expenses are as reported by the Company and are not the result of allocation.

[fol. 199-a-13]

General Expense, Entire System, and Proportion Allocated to the Lexington District; also Reconciliation of Company's Expenses with Those Used by F. B. & D., Inc., for Year Ended December 31, 1927

Classification	Entire system: At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	Entire system: At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month	Basis of allocation	Lexington District: At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	Lexington District: At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month
Salaries and Expenses, Officers and Superintendents	$10,171.63	$10,171.63	Ratio of other expenses	$5,930.06	$5,930.06
General Office (Salaries, Rents, Stationery, etc.)	13,113.19	13,113.19	" " " "	7,644.99	7,644.99
Private Telephone and Telegraph Lines (Operating and Maintaining)	135.97	135.97	Gas sales	76.82	76.82
Repairs to Buildings	3,662.45	3,662.45	Ratio of other expenses	2,135.21	2,135.21
Miscellaneous	318.97	318.97	Location	284.15	284.15
Interest on Meter Deposits	548.59	548.59	Location	553.33	553.33
Bad Gas and Shop Accounts	−28.40	−28.40	Location	−28.40	−28.40
Unclaimed Meter Deposits					
Total General Expense as used by F. B. & D. Inc.)	27,992.40	$27,922.40		$16,596.16	$16,596.16

	Entire system	
	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month
Adjustments:		
Add:		
Interest and Exchange (A)	$18,236.57	18,236.57
Taxes (B)	35,412.31	35,412.31
Rate Case Expense, etc. (C)	11,752.61	11,752.61
Total Additions	$65,401.49	$65,401.49
Deduct (Company charged these items to Profit and Loss):		
Bad Gas and Shop Accounts	548.59	548.59
Unclaimed Meter Deposits	−28.40	−28.40
Total Deductions	$520.19	520.19
Net Additions	$64,881.30	$64,881.30
Total General Expense per Company's Reports	$92,803.70	$92,803.70

Calculation of Percentage Relation of Other Expenses for the Lexington District to the Entire System.

Expense	Entire System	Lexington District
Field and Main Line	$58,448.66	$33,023.49
Gas Purchased	404,090.17	228,310.96
City Plant	67,356.87	47,681.42
Total 1927	$529,896.70	$309,015.86
Percentage Relation	100%	58.3%

NOTE.—(A) Interest on unfunded debt, etc., are not included by Ford, Bacon & Davis, Inc., as an item of expense, since the object is to show return on property.

(B) Taxes are shown as a separate item on attached statement and therefore excluded from expenses.

(C) Ford, Bacon & Davis, Inc., estimated an allowance for these items in the cost of obtaining Franchises.

Gas Production and Purchases Year Ended December 31, 1927

	At 40 cents per M. c. f. for first 11 mo. and 30 cents for the last month			At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month		
	M. c. f.	Amount	Per M. c. f.	M. c. f.	Amount	Per M. c. f.
Gas Purchases:						
Bed Rock Petroleum Company	132.442	$16.136.37	$0.122	132.442	$20.109.63	$0.152
Hillsdale Gas Company	195.337	39.067.40	.20	195.337	45.578.62	.233
Kentucky Cities Gas Company	75.674	13.360.59	.177	75.674	15.252.43	.202
Petroleum Exploration Co., Inc	87.726	13.217.85	.151	87.726	15.410.99	.176
United Fuel Gas Company	1.182.431	241.696.20	.204	1.182.431	300.817.75	.254
Boston & So. Western Oil and Gas Company	59.765	5.976.50	.10	59.765	5.976.50	.10
Carroll Oil & Gas Company	211.365	22.508.55	.106	211.365	22.508.55	.106
East Kentucky Oil Company	19.896	1.989.60	.10	19.896	1.989.60	.10
Eastern Kentucky Oil Company	17.423	1.742.30	.10	17.423	1.742.30	.10
Fearless Oil & Gas Company	12.188	1.218.80	.10	12.188	1.218.80	.10
George & Tauma	20.698	2.069.80	.10	20.698	2.069.80	.10
J. T. Hare & Son	9.116	911.60	.10	9.116	911.60	.10
Alamander Kelly	45.889	4.588.90	.10	45.889	4.588.90	.10
Martin Oil & Gas Company	30.965	3.096.50	.10	30.965	3.096.50	.10
McNabb & Chennront	19.451	1.945.10	.10	19.451	1.945.10	.10
Portsmouth O. K. Gas Company	18.619	1.861.90	.10	18.619	1.861.90	.10
Pu-John Oil Company	54.699	5.469.90	.10	54.699	5.557.62	.102
Lewis Vincent	12.972	2.594.40	.20	12.972	2.594.40	.20
Inland Gas Corp	264.195	54.677.57	.207	264.195	63.384.06	.24
Petroleum Exploration, Inc. (Owsley)	118.713	47.485.34	.40	118.713	47.485.34	.40
Total Gas Purchased	2.589.564	$481.615.17	$0.186	2.589.564	$564.096.38	$0.218
Less Amount Stored in Menifee Field	742.451	93.464.35	.126	742.451	102.685.54	.138
Net Available Purchased Gas	1.847.113	$388.150.82	$0.210	1.847.113	$461.410.84	$0.250

	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month			At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month		
	M. c. f.	Amount	Per M. c. f.	M. c. f.	Amount	Per M. c. f.
Production:						
Withdrawn from Menifee Field	153,020	16,674.94	.109	153,020	16,674.94	.109
Produced from Red Bush Field	203,395	.....	.....	203,395	.....	.....
Total Production	356,415	$16,674.94	.....	356,415	$16,674.94	.....
Total Gas Available for Sale and Use as per Company's Books	2,203,528	$404,825.76	$0.184	2,203,528	$478,085.78	$0.217
Adjustments:						
Add: Withdrawn from Menifee Field for Use in Menifee Compressor Station	4,790	445.47	.093	4,790	445.47	.093
Deduct: Amount of Adjustment in Cost of Gas Withdrawn from Menifee Field based on Corrected Cost per M. c. f. of Gas Stored	.....	1,181.06	.....	.....	1,181.06	.....
Net Adjustments	4,790	$-735.59	.....	4,790	$-735.59	.....
Total Gas Available for Sale and Use as Adjusted	2,208,318	$404,090.17	$0.183	2,208,318	$477,350.19	$0.216

[fol. 199-a-15]

Federal Income Tax, Franchise Tax, and Tangible Property Tax

	Entire system		Lexington District	
	At 40 cents per M. c. f. for first 11 mo. and 60 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month	At 40 cents per M. c. f. for first 11 mo. and 50 cents for the last month	At 50 cents per M. c. f. for first 11 mo. and 60 cents for the last month
Franchise Tax (A)	$24,915	$24,915	$14,620	$14,620
Tangible Property Tax (A)	12,390	12,390	6,694	6,694
Federal Income Tax	5,743 (B)	7,898 (C)	3,036 (C)	4,699 (C)
Total Taxes	$43,048	$45,203	$24,350	$26,013

NOTE.—(A) Franchise and Tangible Property Taxes for the year 1927 are estimated as an average of the years 1924, 1925 and 1926.

(B) Actual Federal Tax, for the year 1927 per Company's records.

(C) Estimated on relation of net revenue.

[fol. 199-a-16]

Summary of Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance, and Contingencies

	Entire system	Lexington District
Estimated Annual Allowance Necessary for Amortization and Depletion:		
Central Kentucky Natural Gas Co., Inc	$146,603	$82,477
Lexington Utilities Co., Inc	12,191	12,191
Total	$158,794	$94,668
Estimated Annual Allowance Necessary for Extraordinary Maintenance:		
Central Kentucky Natural Gas Co., Inc	$25,090	12,878
Lexington Utilities Co., Inc	8,384	8,384
Total	$33,474	$21,262
Estimated Annual Allowance Necessary for Contingencies:		
Central Kentucky Natural Gas Co., Inc	$	$
Lexington Utilities Co., Inc		
Total	$10,000	$5,600
Total Estimated Annual Allowance Necessary for Amortization, Depletion, Extraordinary Maintenance and Contingencies	$202,268	$121,530

NOTE.—A detail estimate of the above allowances is shown in Company's Exhibit No. 4.

[fol. 200] The Witness: This Exhibit No. 8 is entitled "Net Revenue Available for Return on Property of Central Kentucky Natural Gas Company, Inc., and Lexington Utilities Company, Inc., based on operating Reports of the Central Kentucky Natural Gas Company, Inc., for the year 1927." The Exhibit is dated April 17, 1928.

The statements contained therein are exactly parallel to and prepared in the same way that the corresponding statements have been prepared and are set forth in Exhibit No.

4, except that this one is for the year 1927. If you will refer to page No. 4 in Exhibit No. 8 you will find a summary statement, which shows the net revenue of the Central Kentucky Natural Gas Company available for return on the property of both the Central Kentucky Natural Gas Company and the Lexington Utilities Company, and based on the price of gas being 40¢ for the first eleven months of the year 1927, and 50¢ for the last month, those being the amounts which the Company obtained, though the receipts in each of those periods were 10¢ in excess of that; that 10¢ per M. c. f. was impounded.

This statement on page 4 shows that the net revenue available for return under the conditions just stated was, [fol. 201] for the entire system, $26,203; and allocated to the Lexington District, $23,815. Those amounts are 59/100 of 1% and 85/100 of 1% of the valuation of the property respectively.

On page 5 there is a similar statement based on the gas sales being at the rate of 50¢ per M. c. f. for the first eleven months, and 60¢ per M. c. f. for the last month.

Here you will note that the net revenue available for return, if the Company—that is, the Central Kentucky Natural Gas Company had been permitted to receive the full amounts of 50¢ and 60¢ in the period when those rates applied, the net revenue would have been $118,777; that is, for the entire system; and $98,307 allocated to the Lexington District. These amounts are 2.69% of the valuation of the property of the entire system and 3.52% of the valuation of the property allocated to the Lexington District.

Page 6 shows the total of gross revenue and operating expenses for the entire system and for the Lexington District, and in each instance for the entire system and for the Lexington District it is shown at the two rates, namely, 40¢ for the first eleven months and 50¢ for the last month, in one instance, and 50¢ in the other instance for the first eleven months and 60¢ for the last month in the last instance. Then at the bottom of that page you will note under the heading, "Net Operating Revenue Available for Amortization, Depletion, Extraordinary Maintenance, Contingencies, Interest and Dividends", are the amounts carried forward from the statements on pages 4 and 5.

[fol. 202] Page 7 is a detail of the gross revenue from operations and shows the amount received from the sale of

gas in Lexington, urban and suburban, in Winchester and Mt. Sterling, and from sales of gas to the three companies to which the Central Kentucky Natural Gas Company sells gas wholesale. It also shows the miscellaneous earnings from gasoline, shop, interest and miscellaneous, and these amounts have, in turn been allocated to the Lexington District in accordance with the basis shown in the center of that sheet. These amounts are carried forward from the statement on page 6.

Page 8 is a further detail of the sale of gas, showing the amount of gas sold in thousands of cubic feet, as well as the amount of money received from the sale of that gas, and the statement also shows the amount per thousand cubic feet which was received on the average.

Page 9 shows the sales of gas in thousands of cubic feet in each year from 1923 to 1927, inclusive, broken down by districts in which the sales were made; and it shows the average for that five year period; and in the last column the percentage which was sold in the various districts; that is, the percentage which was used in allocating the various expenses. And, in looking at the total gas sales on this sheet on the bottom, you will note that there has been not so great variation in those sales over that five year period. 1927, however, is less than ~~in~~ any of the previous years shown. That has resulted, I believe, from two causes, namely, that 1927 was a somewhat warmer year than the average, and secondly, that with the higher rate the sales are not as great as with the lesser rate.

[fol. 203] Page 11 shows the detail of one of the elements of operating expense, namely, Field and Main Line Expense; and it also shows the amount allocated to the Lexington District. You will note near the bottom of the sheet, "Total Field and Main Line Expenses used by Ford, Bacon & Davis, Inc." $58,448,66. The books showed, however, $63,155.11, the figure at the bottom of the sheet. Ford, Bacon & Davis have deducted from the book figure the tax of $9.75, which Ford, Bacon & Davis have included elsewhere; and they have also deducted the cost of gas used as fuel in the compressing stations, which the Company has included in its expense as well as in its revenue, $4,696.70, so that the one off-sets the other; so that we have neglected to consider it in either place, with the same net result.

Page 12 is the total of the City plant expense. That is the operation of the distribution system in Lexington, Winchester and Mt. Sterling, and it shows the summation of all those expenses for those three localities, as well as the amount applicable to the Lexington District. Here again, the third line from the bottom, you will find the total City plant expenses used by Ford, Bacon & Davis for the entire system, estimated at $67,356.87. The Company's books showed $122,808.46, the difference being due to the rental of $55,451.59, which was paid by the Central Kentucky Natural Gas Company to the Lexington Utilities Company for the use of the latter Company's distribution system inside of the corporate limits of the City of Lexington; and, as I have explained heretofore, we have included the valuation of these properties as set forth in Exhibit No. 1, on [fol. 204] which the Company is entitled to a return, and in that event we naturally could not include also the rental paid to that Company in its expenses.

Page 13 is the detail of the general expenses, and near the top of the sheet is the item of "Total General Expense as Used by Ford, Bacon & Davis, Inc.", and at the bottom of the sheet is shown the total general expense as reported by the Company. Ford, Bacon & Davis made these adjustments as shown under that caption and have deducted from the Company's report interest and exchange, because we are attempting to find out the amount available for that purpose, and consequently should not include that as an expense. We further deducted the taxes in this case, since we have included it in one lump sum elsewhere; we have deducted the rate case expenses, on the theory that that should be set up and written down year by year over the period of the franchise.

We have added, however, to the general expenses the loss which the Company experienced through bad gas and shop accounts and other miscellaneous items of unclaimed meter deposits which the Company has put under profit and loss rather than under property accounts.

Page 14 is the detail of gas production and purchases for the year ending December 31, 1927; and it shows what the Company would have paid for gas based on the rate of 40¢ for the first eleven months and 50¢ for the last month, in one instance, and what the Company would have paid

at 50¢ for the first eleven months and 60¢ for the last month, in the other instance.

I believe it is already in the record that many of these [fol. 205] gas transactions are worded so that the price which the seller receives for his product when he sells to the Central Kentucky Natural Gas Company is controlled by the price which the Central Kentucky Natural Gas Company gets for the gas that it sells at retail to its consumer. This statement shows all of the Companies or individuals from whom the Central Kentucky Natural Gas Company bought gas in the year ending December 31, 1927, and the amount in thousands of cubic feet as well as in dollars. It shows the amount, about the center of the sheet, that was stored in the Menifee Field during that time. It shows the amount which was withdrawn in the cold months of that year and the amount which was produced in the Company's own field, known as the Red Bush Field; and it shows the amount of adjustment, at the bottom, for gas which was used in the compressor stations; and also an adjustment for gas withdrawn from the Menifee Field, based on a corrected figure that Ford, Bacon & Davis have used and which differs slightly from that used by the Company.

Page 15 is a statement of the Federal Income Tax, Franchise Tax and Tangible Property Tax. The Franchise tax for the year 1927 is estimated as being the average for the years 1924, 1925, and 1926, the details of those taxes being set forth in Exhibit No. 4. The Company did not, as I understand it, actually pay much, if any, of the Franchise tax in 1927, though they are obligated to do so sooner or later.

The Tangible Property tax is likewise averaged for the years 1924, 1925 and 1926.

The Federal tax, $5,743 is the amount which the Company actually paid in 1928 on its income during the year 1927; and with a rate of 50¢ for the first eleven months and 60¢ for the last month, if the Company had been permitted to have all of the money which was impounded, then its Income Tax would have been $7,898 instead of $5,743 actually paid.

Page 16 is a summary of the estimated annual allowance necessary for amortization, depletion, extraordinary maintenance and contingencies; and that has been described in detail by description of Exhibit 4 where all the detail underlying all those figures is set forth.

[fols. 205-a-205-a-3] [File endorsement omitted]

Company Exhibit No. 9

[fol. 205-a-4 & 205-a-5 & 206] Statement No. 4

Central Kentucky Natural Gas Company, Inc.

Estimated Quantity and Cost of Gas Purchased, Based on Rate Structure of:
(a) $.75 Customer Charge.
(b) .65 per M. c. f. for first 5,000 cu. ft. per month.
(c) .60 per M. c. f. for next 5,000 cu. ft. per month.
(d) .55 per M. c. f. all over 10,000 cu. ft. per month.

Name of company	Minimum quantity per contract (M. c. f.)	Estimated quantity of gas purchased (M. c. f.)	Contract price per M. c. f.	Estimated cost of gas purchased
United Fuel Gas Co	720,000	720,000	35.0¢	$252,000
Petroleum Exploration Co. Inc.	750,000	750,000	40.0	300,000
Hillsdale Gas Co	720,000	450,000	30.0	135,000
Bed Rock Petroleum Co	1,220,000	125,000	21.0	26,250
Carrol Oil & Gas Co	300,000	200,000	10.0	20,000
Kentucky City Gas Co	1,000,000	125,000	25.0	31,250
Independent Producers		350,000	10.0	35,000
Total Purchased Gas		2,720,000		$799,500
Red Bush Production		100,000		
Total Gas Purchased and Produced		2,820,000		$799,500
Estimated Total Gas Sales		1,910,117		
Estimated Loss and Company Usage (10%)		191,012		
Total		2,101,129		
Gas Stored in Ground, Gas Purchased Account		718,871	13.0¢	$93,453
				$706,047

	Total estimated gas sales M. c. f.
Retail Sales:	
Lexington District	1,058,733
Winchester	228,307
Mt. Sterling	132,967
Total	1,420,007
Wholesale:	
Frankfort	323,932
Kentucky Utilities	153,082
Blue Grass	13,096
Total	490,110
Total Retail and Wholesale	1,910,117

[fol. 207] Hearing Held April 26 (Continued)

At the conclusion of the testimony of the witness, Kimball, at this hearing, the following letter was read into the record:

April 12th, 1928.

"Mr. Henry T. Duncan, Lexington, Ky.; Mr. D. L. Hazelrigg, Frankfort, Kentucky.

GENTLEMEN: This letter is addressed to you as attorneys for the Central Kentucky Natural Gas Company in the proceeding before the Railroad Commission of Kentucky, wherein City of Lexington, et al.—are Complainants, and the Central Kentucky Natural Gas Company is defendant.

On March 14 and 15, 1928, your client introduced before the Commission certain witnesses and among others Mr. John T. Kimball. This witness bases his testimony about the cost of gas to your client, upon certain contracts set out by name upon page 14 of Exhibit 4, filed on that occasion. But there were filed no copies of these contracts.

There were filed no copies of the contracts, one or more, between your client and the Lexington Utilities Company covering the use of the Lexington Distribution System.

There were filed no copies of the contracts, one or more between your client and the Petroleum Exploration, covering the gas supply to your client from the Owsley County [fol. 208] fields of the Petroleum Exploration.

This letter is to state to you that we desire to have filed in the record upon your next taking, copies of each and all of these contracts, and of each and every alteration and modification thereof. They should be put into the record by a witness who can testify to their accuracy and completeness.

We desire as well to have put into the record at that time the following information:

No. 1. Whether or not your client is now substantially owned by the Columbia Gas and Electric Company?

No. 2. Whether or not the Columbia Gas and Electric Company substantially owns the Ohio Fuel Supply Company?

No. 3. Whether or not the Columbia Gas and Electric Company and the Ohio Fuel Supply Company substantially owns the United Fuel Gas Company, named on page 14 of Exhibit 4, as one of the sellers to your client of gas?

No. 4. Whether or not any of the Companies from which your client is buying gas sell to your client gas which they are purchasing from other companies or individuals? And if so, the details as to quantities, prices, vendors and copies of contracts under which such purchases are made?

No. 5. Does the Columbia Gas and Electric Company own, in whole or in part, any of the Companies from which your client is buying gas, or from which your client's vendors are buying gas that is sold to your client? And if so, the extent of each instance?

No. 6. Is there any interrelation of stockholdings between the Columbia Gas and Electric Company and any [fol. 209] of these companies? And if so, the details thereof?

No. 7. Is there any interrelation, and if so, what is its extent, of stockhodings or ownership between the Columbia Gas and Electric Company, or any subsidiary of it, and the Petroleum Exploration and the Lexington Utilities Company, or either of them?

No. 8. What is the relation between the Columbia Gas and Electric Company, and the Hope Natural Gas Company; and is the last-named Company the owner of any gas now being utilized by your client?

N. 9. Is your client obtaining gas, directly or indirectly, from any source or sources other than those enumerated on page 14 of Exhibit 4? If it be, please give the name, and amounts and file copies of the contract under which such other purchases are being made.

These facts, as well, should be put into the record by a witness qualified to testify to their accuracy.

In the Columbia Gas and Electric Company's magazine "Hail, Columbia" issue of March, 1928, on page 20, appears this statement:

"The Central Kentucky Natural Gas Company officially became a part of Columbia's interconnected system on January 1, 1928."

This fact explains our queries above with respect to the Columbia Gas and Electric Company, and its interconnection with your client and the latter's sources of supply.

We shall need this testimony before we are enabled to present your evidence to our experts for analysis, and to proceed with our cross-examination.

[fol. 210] Very Respectfully, (Sgd.) Robt. H. Winn,
(Sgd.) D. C. Hunter, Attorneys for Complainants.

cc. Railroad Commission of Kentucky, Frankfort, Kentucky."

* * * * * * *

COLLOQUY

Judge Winn: I would like to ask Mr. Hazelrigg at this point as to what is the correct and proper name of the present Columbia Company?

Mr. Hazelrigg: Columbia Gas and Electric Corporation.

Judge Winn: I should like to ask as well that the enquiries in this letter of April 12, 1928, addressed to him and Mr. Duncan, may be read as if the enquiries addressed themselves to the Columbia Gas and Electric Corporation.

Mr. Hazelrigg: I will comply with Judge Winn's request.

Going back to No. 1, in view of having straightened out the matter of the correct name of the Company, the Columbia Gas and Electric Corporation owns a majority of the capital stock of the Central Kentucky Natural Gas Company.

As to query No. 2, the Ohio Fuel Supply Company has been dissolved. For the present, that is the answer to that enquiry.

Going back to query No. 3, and substituting the Columbia Gas and Electric Corporation for the Columbia Gas [fol. 211] and Electric Company, it is stated that the Columbia Gas and Electric Corporation owns 100% of the stock of the United Fuel Gas Company.

Coming to query No. 4, it is stated that the Central Company purchases gas from the United Fuel. A copy of that contract has been filed and the details of the quantities, prices, etc., have been given in testimony in this hearing.

As to the other companies from which the Central Company purchases gas, there is no relationship of any kind, no corporate relationship.

In answer to query No. 5, the Columbia Gas and Electric Corporation has no interest in any company from which the Central Company purchases gas, with the exception of the United Fuel Company and that interest is as above explained.

With reference to query No. 6, there is no interrelation between the Columbia Gas and Electric Corporation in any of the companies from which the Central Company purchases gas, with the exception of the United Fuel Gas Company.

With reference to query No. 7, the answer is, there is no interrelation.

Judge Winn: You mean as to either of these companies?

Mr. Hazelrigg: That is right.

With reference to enquiry No. 8, the answer is the same, that there is no interrelation between the Columbia Cor-
[fol. 212] poration and the Hope Natural Gas Company; nor is the Hope Natural Gas Company the owner of any gas now being utilized by the Central Company, so far as we know.

With reference to enquiry No. 9, at the present time the Central Company is not purchasing gas of any company other than those named in Exhibit No. 8, and filed by Mr. Kimball in today's hearing.

* * * * * * *

[fol. 213] The plaintiff then filed copies of the gas purchase contracts between the plaintiff and various companies and individuals as Exhibits Nos. 10 to 20, both inclusive, and Nos. 22 to 25, both inclusive. The material provisions of said contracts are abstracted as follows:

Co. Exhibit	Date	Name	Duration	Minimum annual delivery M. c. f.	Price
#10	12/31/23	South Western Oil & Gas	As long as gas produced in paying quantities	All produced	10 cents
#11	6/23/23	Boston & South Western O. & G. Co.	Ditto	Ditto	10 cents
#12	7/28/23	East Ry. Oil Co	Ditto	Ditto	10 cents
#13	2/25/24	Alamander Kelley	Ditto	Ditto	10 cents
#14	7/24/23	Martin Oil & Gas	Ditto	Ditto	10 cents
#15	2/—/25	H. T. Hare & Son	Ditto	Ditto	10 cents
#16	4/20/25	Lewis Vincent	Ditto	Ditto	20 cents
#17	9/25/22	Pu-John Oil Co	Ditto	Ditto	20% Domestic Rate
#18	7/20/20	Ky. Cities Gas Co	Ditto	1.000.000	17.5 cents plus 25% of increase over 40 cents per M. c. f.
#19	11/27/18	Menifee Oil & Gas	Ditto	Ditto	9½ cents
#20	11/ 1/12	United Fuel Gas Co	20 years	720.000	50 per cent of Average Domestic Rate
#22	3/24/27	Petroleum Exploration	2 20 47	750.000	40 cents per M. c. f. at Lexington City Gate
#23	11/21/27	Carroll Oil & Gas	10 years	300.000	15 cents
#24	1/24/27	Hillsdale Gas Co	10 years	720.000	20 cents plus 1/3 of any increase over 40 cents per M. c. f.
#25	11/20/18	Bed Rock Oil Co	As long as gas produced	1.220.000	30 per cent of Average Domestic Rate

[fol. 214] Following is a complete copy of

COMPANY EXHIBIT No. 22

This agreement, made and entered into this 24th day of March, A. D. 1927, by and between Petroleum Exploration, Incorporated, a corporation organized under the laws of the State of Maine, hereinafter called the "Petroleum Company", party of the first part and the Central Kentucky Natural Gas Company, Incorporated, a Kentucky Corporation, hereinafter called the "Central Company", party of the second part,

Witnesseth: Whereas the Petroleum Company is engaged inter alia in the business of producing natural gas from fields in Owsley and Clay Counties in the State of Kentucky and the Central Company is engaged inter alia in the business of distributing natural gas in the City of Lexington and vicinity in the State of Kentucky, and desires to supplement its present supply by purchasing natural gas from the Petroleum Company;

Now, therefore, for and in consideration of the mutual agreements herein contained to be paid, kept and performed, the parties hereto have agreed and do hereby agree with each other as follows:

First. The Petroleum Company agrees to construct a pipe line of not less than eight (8") inches inside diameter from its said Owsley County and Clay County gas fields to the measuring and regulating station next hereinafter mentioned; the construction of said pipe line to be commenced by said Petroleum Company not later than the 20th day of May, 1927, and carried on with due diligence, except as hereinafter otherwise provided, and said pipe line to be [fol. 215] completed in any event not later than the 20th day of May, 1928.

Second. The Central Company agrees to construct and equip a measuring and regulating station on East Third Street, at the said City of Lexington adjacent or near to its present high pressure regulating station there located; the construction and equipment of said measuring and regulating station shall be completed by the time the said pipe line is completed. The said regulating and measuring

station shall be equipped inter alia with orifice meters or such other measuring devices as the parties hereto may agree upon in substitution therefor. All equipment installed in said station shall be first approved by the Petroleum Company. The Petroleum Company shall pay to the Central Company one-half (½) of the actual cost of constructing and equipping said station, and shall own a one-half (½) interest therein, except the land on which said station is located, which land shall be furnished during the term of this agreement by the Central Company, without cost to the Petroleum Company. The said station shall be maintained and operated under the joint supervision and control of the parties hereto, each of said parties to furnish its own agents for the purpose, and the cost and expense of such maintainance and operation, except for salaries of such agents shall be shared equally by the said parties. Each of said parties shall at all times have free and uninterrupted access to said station.

Third. The Petroleum Company agrees to sell and deliver to the Central Company, provided it can furnish so [fol. 216] much from its said gas fields or from such other sources as may be connected to its said pipe line, and said Central Company agrees to purchase and accept from said Petroleum Company, at said regulating and measuring station, from and after the completion of said pipe line, at the price of forty (40¢) cents per thousand (1,000) cubic feet in each month during the term of this agreement minimum quantities of natural gas as follows:

In each	January	120,000,000	cubic feet
" "	February	90,000,000	" "
" "	March	80,000,000	" "
" "	April	60,000,000	" "
" "	May	45,000,000	" "
" "	June	30,000,000	" "
" "	July	30,000,000	" "
" "	August	30,000,000	" "
" "	September	30,000,000	" "
" "	October	50,000,000	" "
" "	November	75,000,000	" "
" "	December	110,000,000	" "

In addition thereto and subject to the same provisions and at the same price the Central Company shall have the option of purchasing from said Petroleum Company at said regulating and measuring station additional quantities of gas not to exceed in any one month one-third (⅓) of the amount above set forth opposite such month.

The delivery of said gas to the Central Company as above provided and set forth shall have priority over all other deliveries of gas from said pipe line.

Subject to said priority of the Central Company the Petroleum Company shall have the right to make deliveries of gas from said pipe line for distribution in the Towns and Cities of Pryse, Irvine, Ravenna, Richmond, and adjacent vicinities, in the State of Kentucky; and the Petro- [fol. 217] leum Company shall not make delivery of gas from said pipe line to any other Company, except for distribution as above mentioned, nor shall it make delivery of gas from said pipe line for distribution in any other town, city or vicinity unless it shall first offer such gas to the Central Company for distribution in such other town, city or vicinity and the Central Company shall have failed for the period of two (2) months to accept such offer.

If in any month gas in excess of the quantities above mentioned be delivered by the Petroleum Company and received by the Central Company at said regulating and measuring station such excess shall be paid for by the Central Company to the Petroleum Company at the same price, that is, forty (40¢) cents per thousand (1,000) cubic feet.

Gas delivered from said pipe line to the Central Company hereunder shall be made and accepted in daily amounts throughout each month as nearly uniform as practicable.

Fourth. If the Petroleum Company is unable to deliver the aggregate amount of gas as set forth in the above schedule of minimum monthly amounts during any winter period, namely from November 1 to April 30, inclusive, then the Central Company may at its election reduce the minimum amounts to be taken during the ensuing summer period, namely from May 1 to October 31, inclusive, in like proportion.

Fifth. If orifice or other recording meters are used the pressure charts shall be lifted daily in the presence of an

agent of each party hereto and shall be signed and certified by such agents and delivered forthwith to the Petroleum Company. The quantities of gas delivered hereunder shall be computed on the basis of six (6) ounces per square inch pressure above atmospheric, according to Boyle's law for [fol. 218] the measurement of gas at varying pressures. Fourteen and four tenths (14.4) pounds per square inch is adopted as atmospheric pressure and fifty (50 deg.) degrees Fahrenheit as temperature of such gas for the purpose of such computation. Gravity tests shall be made, according to the method prescribed by the United States Bureau of Standards, of samples of gas taken at said regulating and measuring station, semi-monthly, that is on or about the 1st and 15th days of each month, for the purpose of determining the future corrections in the coefficients of the orifice meters.

Sixth. The Petroleum Company shall on or before the 10th day of each month render to the Central Company a statement of account for the preceding month and payment of all amounts owed hereunder by the Central Company to the Petroleum Company for each month shall be made on or before the 20th day of the following month. The said pressure charts showing deliveries of gas in each month shall accompany the said statement for such month; the said charts shall be returned to the said Petroleum Company within thirty (30) days.

Seventh. When the rock pressure of the gas wells in said gas fields and of such other gas wells as may be connected to said pipe line is insufficient to maintain in said pipe line at said regulating and measuring station an adequate pressure, but not to exceed, however, fifty (50) pounds per square inch, then the Petroleum Company agrees without delay to install a compressor or compressors of sufficient capacity to enable it to maintain in said pipe line at said regulating and measuring station an adequate pressure, but not to exceed, however, fifty (50) pounds per square inch, so far as practicable in view of the quantities of gas supplied by such wells.

Eighth. The Petroleum Company reserves the right to [fol. 219] recover the gasoline from all gas before delivery thereof to the Central Company.

Ninth. In case the supply of gas available for delivery hereunder to the Central Company so diminishes that the Petroleum Company is unable to deliver five hundred thousand (500,000) cubic feet on the average per day during the winter period, namely, from November 1, to April 30, inclusive, either Company shall have the right upon six (6) months' written notice to cancel this agreement.

Tenth. It is mutually understood and agreed that where either party to this contract fails to perform any obligation herein assumed by it and such failure is due to acts of God, or a public enemy, strikes, riots, injunctions or other interferences through legal proceedings, breakage or accident to machinery or lines of pipe, washouts, earthquakes, storms, freezing of the lines or wells, sudden partial or entire failure of gas wells, or to any cause not due to the fault or neglect of such party, or is caused by the necessity of making repairs or alterations in machinery or lines of pipe, such failure shall not be deemed to be a violation by such party of its obligations hereunder, but such party shall use due diligence to again put itself in position to carry out all of the obligations which by the terms hereof it has assumed.

Eleventh. Unless previously terminated pursuant to the provisions hereof or by mutual consent of the parties hereto, this agreement shall be in force until and shall terminate on the 20th day of February, 1947, at which time the Central Company shall have the option to purchase from the Petroleum Company, by giving it written notice within ten (10) days, its one-half (½) interest in the said [fol. 220] regulating and measuring station, and the portion of said pipe line at and between Lexington and Ida May, Kentucky, and all compressing stations, equipment and machinery, at and between said places used in connection with the operation of said pipe line, at such price as may be mutually agreed upon between the parties hereto but in the event they are unable to so agree, then at such price as shall be fixed by three (3) disinterested persons, one to be selected by the Petroleum Company, one by the Central Company, and the third by the two so chosen.

Twelfth. It is mutually understood and agreed that in case the Central Company shall fail to pay the Petroleum

Company any amount that may be due and payable hereunder to the Petroleum Company within thirty (30) days after such amount becomes due and payable, the Petroleum Company shall have the right, without canceling this agreement or waiving any of its rights hereunder, to suspend the delivery of natural gas hereunder until all amounts due it are paid, or at its option shall have the right to terminate this agreement on thirty (30) days' notice to the Central Company, without prejudice to its right to collect the amounts due it at the time of such termination for any gas furnished hereunder, and to recover such damages as it may sustain by breach of this agreement by the Central Company.

Thirteenth. This agreement shall be binding upon and extend to the parties hereto and their successors and assigns, respectively.

In witness whereof the parties hereto have hereunto [fol. 221] caused their corporate names to be signed by their respective Presidents and their respective seals to be hereunto affixed by their respective Secretaries the day and year first above written.

Petroleum Exploration (Incorporated), by Ed Durham, President. Attest: L. E. Gregg, Secretary. Central Kentucky Natural Gas Co. (Incorporated), by John Tonkin, President. Attest: Robert S. Hampton, Secretary.

WJB:MFS.

[fol. 222] Hearing May 18, 1928

W. J. Hightower, Assistant Treasurer and Assistant Secreary of Gas Company, testified in substance:

That he had custody of the books and records of said Company; that he had examined Exhibit No. 4 filed by Mr. J. T. Kimball showing net revenue available for return, and that all of the figures therein contained purporting to be taken from the books of the Company were correct as they appear upon said books.

T. J. TOMKIN, JR., Vice-President and Operating Manager of the Gas Company, testified in substance as follows:

That he had been employed by the Gas Company and intimately associated with the business of said Company since 1905; that in 1905 the Gas Company purchased from the New Domain Oil and Gas Company, the gas field in Menifee County, Kentucky, and developed this field, which was its only source of supply until 1912, in which year the Gas Company made a contract with the United Fuel Gas Company for the delivery of gas at Inez, Martin County, Kentucky, and in order to receive this gas the Company extended its ten-inch main transmission line from the Menifee field to Inez, Kentucky.

That of the date the witness testified there were three main sources of supply, to-wit: United Fuel Gas Company, Petroleum Exploration, Inc., Inland Gas Corporation, and in addition thereto, the Company's own field in Menifee County.

That the other sources of supply were from various independent producers, but were of a minor character.

[fol. 223] That the gas was then being withdrawn or used from the Menifee Field mainly for the purpose of meeting peak demands in very cold weather.

That during the winter of 1927-1928 gas was withdrawn from the Menifee field during a portion or all of thirty-three days.

That the gas obtained from the Petroleum Exploration was first turned into the Company's pipe lines in November, 1927.

That the first five days in January, 1928, the temperature was down to about zero, and during that period it was necessary to withdraw gas from the Menifee Field from 8 o'clock A. M., on January 1st, until 8 o'clock P. M., on January 5th—during which time there was withdrawn and put into the Company's lines, about twenty-two million cubic feet of gas.

That during said period from January 1 to January 5, inclusive, the Company was using all of the gas it could obtain from all of its other sources of supply.

That on January 1, 1928, the Company distributed and sold about 19,152,000 cubic feet of gas, which was obtained from the following sources, to wit:

Petroleum Exploration	5,307,000 cu. ft.
United Fuel Gas Company	3,673,000 cu. ft.
Inland Gas Corporation	1,672,000 cu. ft.
All other producers	500,000 cu. ft.
Menifee Field	500,000 cu. ft.
The Company's Red Bush Field and various smaller producers in the same field	3,000,000 cu. ft.

and that on said date the Company was taking all of the gas which each of said producers was able to deliver.

That Petroleum Exploration, under its contract, agreed to maintain at Lexington, a pressure of fifty pounds, and [fol. 224] the company agreed to purchase during the month of January of each year, 120,000,000 cubic feet of gas,—an average of 4,000,000 cubic feet per day; that by taking on January 1, 1928, 5,307,000 cubic feet, the excess load placed upon the Petroleum Exploration, pulled down their pressure to 20 pounds, which was just as low as it could be and have proper service at Lexington.

That prior to the making of the contract with the Petroleum Exploration, the company had not been able to supply peak demands during very cold weather, and such inability had been the cause of many complaints; and the winter of 1927-1928 was the first time in many years that the company had been able to approximate perfect service, and this was by reason of having obtained the additional supply from the Owsley County field (Petroleum Exploration) through the separate pipe line from Lexington to Owsley County.

Hearing March 11-12, 1929

Witnesses for the City

[fol. 225] JOHN JIRGAL testified that he was a Public Accountant and member of the firm of Arthur Andersen & Company, Public Accountants of Chicago, Illinois, and that he was experienced in public accounting work and in making valuations of public utility properties.

He testified that he had determined from the books of the Central Kentucky Natural Gas Company, used and useful

in rendering gas service, and from the books of Lexington Utilities Company, the book cost of said combined properties as adjusted by him as of December 31, 1927, to be $2,101,719.34, and that the net additions to the property of Central Kentucky Natural Gas Company during the year 1927, amounted to $81,987.32, and the net addition to the property of Lexington Utilities Company during the year 1927, amounted to $53,604.73, a total of $135,592.05.

EARL L. CARTER, a qualified consulting engineer and specializing in public utility valuation work, testified that he had made an appraisal of the physical property of the Central Kentucky Natural Gas Company and of the Lexington Utilities Company (being the distribution plant in the City of Lexington), based on reproduction cost new and as depreciated by him as of December 31, 1926 and also as of December 31, 1927, the difference in said two values as depreciated by him being $53,452.00.

He presented and filed certain Exhibits designated respectively as "Carter Exhibit No. 7," "Carter Exhibit No. 8," and "Carter Exhibit No. 10," copies of which are filed herewith as part hereof.

The following portion of Mr. Carter's testimony concerning said Exhibits is reproduced in the form of questions and answers in the exact words of said witness as follows:

[fol. 226] "Counsel: Mr. Carter, you were asked to make up as a matter of computation for the Commission two certain Exhibits, No. 7 and No. 8, which I asked you to file under those numbers and as to which I desire to go into something of detail with you, No. 7 being "Rate of Return for Lexington District Using Various Values for Property of the Central Kentucky Natural Gas Co., Inc., and Considering Rental Paid to the Lexington Utilities Co., Inc.," and for No. 8 this title, "Rate of Return for Lexington District Using Various Values for Property for Central Kentucky Natural Gas Co., Inc., and the Lexington Utilities Co., Inc., and Considering the Property of the Lexington Utilities Co., Inc., as a Part of the Integer."

Will you now file those two Exhibits with the Commission and supply copies to interested counsel?

The Witness: Yes sir.

Same are attached hereto marked "Carter No. 7" and "Carter No. 8."

[fol. 227] Counsel: "Mr. Carter, referring now to Exhibit No. 7, you were asked by Counsel for the City of Lexington as a matter of computation for the benefit of Counsel and the Commission to bring down certain definite results of cost of gas to the City of Lexington and its consumers and what would be an appropriate price, and as toward that end you were asked to make these calculations upon two separate hypotheses—first to consider the property of the Central Kentucky Natural Gas Company as one integer and the properties of the Lexington Utilities Company leased by them to the Central Kentucky Natural Gas Company as a separate integer under the rental conditions as called for on the contract exhibit on file in the record; in the other computation you were asked to treat as the Central Kentucky Natural Gas Company expert has treated the matter, the property of the Central Kentucky Natural Gas Company and the Lexington Utilities Company as an entire integer, disregarding the rental lease, but carrying it into the rate base. Have you made that up on this theory?

The Witness: "I have; yes sir.

Counsel: "Now, on Exhibit No. 7 we find at the top the word "Assuming" and under that the letters "A-G". "A" says: "Various values for property of Lexington district of Central Kentucky Natural Gas Co., Inc." Are they those values that appear in Roman Numerals, items of [fol. 228] I, II, III, IV and V below?

The Witness: Yes, sir; they are.

Counsel: And "B" says: "1926 operating expenses and revenue". Where did you get the operating expenses and revenues that you have utilized in making this calculation?

The Witness: From Exhibit No. 4, filed by Ford, Bacon & Davis, Inc.

Counsel: In other words, you have adopted for the purpose of this calculation Messrs Ford, Bacon & Davis' manifestation of expenses?

The Witness: That is right, for the year 1926.

Counsel: "C" says: "750,000,000 cu. ft. of gas purchased at 40¢/M cu. ft." Do you understand why you were asked to make a calculation upon that basis?

The Witness: I think I do; yes, sir.

231. Why?

A. The 750,000,000 cu. ft. represent the minimum amount annually under the Petroleum Exploration Company contract that the Central Kentucky Natural Gas Company would be obligated to take at 40¢ per M. cu. ft.

Counsel: In other words, you find in the record a contract obligation upon the part of the Central Kentucky Natural Gas Company to buy from the Petroleum Explora[fol. 229] tion Company as much as 750,000,000 cu. ft. a year.

The Witness: That is correct.

Counsel: And you have figured that at 40¢, the contract price?

The Witness: Yes, sir."

* * * * * * *

Counsel: "Now, turn to Exhibit 8. You were asked in this Exhibit, differing from that of No. 7, only to treat the two items of values, those of the Central Kentucky Company allocated to Lexington, and those of the Lexington Utilities Company used in the distribution at Lexington as one entire property.

The Witness: That is correct.

250. And then to make these same calculations.

A. Yes, sir.

251. Is that correct?

A. It is.

252. And upon the assumption of the purchase of 750,000,000 cu. ft. of gas at 40¢ M. cu. ft.?

A. Yes, sir."

Hearing April 8-16, 1929

"Mr. Carter, upon your former examination in chief you were asked to make up two Exhibits which you filed as "Carter No. 7." and "Carter No. 8", wherein you manifested what the rate of return would be to the Gas Com[fol. 230] pany under the sale price of 40¢ a thousand cubic feet after the purchase by the Gas Company of 750,000 M cubic feet at 40¢, the balance at 12½¢ and allocated to the Lexington District; and to thus differentiate your two calculations, you were asked to put in one based on the property of the Lexington Utilities Co., and the Central Kentucky Natural Gas Co., as separate integers, and in the

ather to treat the two as has done Mr. Kimball of the Gas Co.—as an integer; and in response to that request you made up and filed these Exhibits No. 7 and No. 8.

Since then we have asked you to compile upon the same hypothesis an Exhibit which I will ask you to file as Exhibit "Carter No. 10", assuming the selling price of gas by the Central Kentucky Natural Gas Co., to be 60¢ instead of 40¢. Have you made up and prepared such a document.

The Witness: I have.

Counsel: Will you file the original thereof with the Commission, marking the same "Carter No. 10", supplying copies to Counsel for the Gas Company and the Intervenors.

The Witness: I will; yes, sir."

* * * * * * *

Cross examination:

Q. You are familiar with this franchise contract, are you not?

A. In a general way.

Q. You know, don't you, that under the terms of the contract this Company was required to go out and make ar- [fols. 231 & 231 a] rangements to purchase gas or get gas from another independent field?

* * * * * * *

A. That is my understanding.

Q. That the Company was required under the terms of that contract to make arrangements to get this additional supply?

A. That is my understanding.

Q. Now, on page 1, Exhibit No. 7, you have shown the total amount of revenue from the sale of gas in the Lexington District as $522,349.00, have you not?

A. Yes, sir.

Q. You show by this record that you are familiar with the fact that this Company was required to pay the Petroleum Exploration Company 40¢ a thousand cubic feet in order to get into Lexington this additional supply, are you not?

A. Yes, sir.

Q. And in your computation you allow three hundred thousand dollars as on the basis of 40¢ paid to the Petro-

leum Exploration Company for the deliveries called for under the contract of seven hundred and fifty million cubic feet?

A. That shows on page 2, yes sir."

* * * * * * *

Q. You do recognize the contract obligation with the "Pet. Ex."?

A. Yes, sir.

Q. Then why not recognize the other contracts?

A. The set up is not made in that way; it is made to show certain assumed°.

Counsel: (Interposing) It is made that way just because Judge Winn told you to make it that way?

The Witness: Judge Winn asked for it to be made assuming certain definite assumptions.

Q. And that is the reason you made it up that way?

A. Yes sir.

[fol. 231-b] CARTER EXHIBIT No. 8

Rate of Return for Lexington District, Using Various Values for Property of the Central Kentucky Natural Gas Company, Inc., and the Lexington Utilities Co., Inc., and Considering the Property of the Lexington Utilities Co., Inc., as a Part of the Integer

Earl L. Carter, Consulting Engineer, Indianapolis, Ind.

[fol. 231-b-1] "B"

Rate of Return for Lexington District Assuming

A. Various values for property of Lexington district of Central Kentucky Natural Gas Co., Inc. and of Lexington Utilities Co., Inc. combined.
B. 1926 operating expenses and revenues.
C. 750,000,000 Cu. Ft. gas purchased at 40c / M. Cu. Ft.
D. Balance of gas for total system at 12½c/M Cu. Ft.
E. Allocate to Lexington district portion of total gas purchased.
F. Net revenues available for return = $149,559.37.

Valuation bases	Rate of return	Price per M cu. ft. at which gas must be sold to net 7% return
I. Carter appraisal of physical property as of December 31, 1926, =$1,435,224.....	10.4%	$.363
II. Lexington portion of purchase price Central Kentucky Natural Gas Co., Inc. by Columbia, plus Carter appraisal Lexington Utilities, =$1,913,157.....	7.8%	$ .39
III. Carter physical appraisal, plus Kimball Intangibles, =$1,687,897.....	8.9−%	$.377
IV. Jirgal's cost of reproduction depreciated to Carter condition =$1,504,587.....	9.9+%	$.367
V. Jirgal's cost of reproduction depreciated to Kimball condition =$1,799,626.....	8.3+%	$.383

[fol. 231-b-2]

Sheet 1 Appendix to "B"

Revenues and Expenses for "Lexington District" (Central, Kentucky Natural Gas Co., Inc., and Lexington Utilities Co., Inc.) for Year Ending December 31, 1926, with Gas at 40c per M Cu. Ft. and Considering the Property of the Lexington Utilities Co., Inc., as a Part of the Integer

Gross Revenues from Operation		
Gas Sales (see pages 6 and 8, Ex. No. 4, F. B. and D.):		
Lexington Urban	$487,991.00	
Lexington Suburban	34,358.00	
Total Lexington District	$522,349.00	
Gasoline	6,339.00	
Shop	4,471.00	
Interest	836.00	
Miscellaneous	375.00	
Total gross revenues		$534,370.00
Operating Expenses (Adjusted)		
Field and Main Line Expenses	$27,539.00	
City Plant Expense	42,621.00	
General Expense	18,954.00	
Gas Purchased	244,669.63	
Total operating expenses		$333,783.63
Net revenues before taxes		$200,586.37
Taxes		29,765.00
Net revenue less taxes		$170,821.37
Depreciation charge		21,262.00
Net revenue available for return		$149,559.37

[fol. 231-b-3]

Sheet 2 Appendix to "B"

Field and Main Line Expense (See Pages 6 and 11, Ex. No. 4, F. B. & D.)		$27,539.00
City Plant Expense (See Pages 6 and 12, Ex. No. 4, F. B. & D.)		$42,621.00
General Expense (See Pages 6 and 13, Ex. No. 4, F. B. & D.)		$18,954.00
Gas Purchased: (See P. 14, Ex. No. 4, F. B. & D.)		
Net Available Purchased Gas for Entire System (1926) 1,819,261 M Cu. Ft.		
Cost of Gas:		
750,000,000 @ 40c/M Cu. Ft.	$300,000.00	
1,069,261,000 @ 12½c/M Cu. Ft.	133,657.62	
Totals 1,819,261,000 Cu. Ft.	$433,657.62	
Cost of Gas Purchased allocated to Lexington District on Basis of Gas Sales (See P. 17, Ex. No. 4, F. B. & D. 56.42%):		
56.42% of $433,657.62		$244,669.63

[fol. 231-b-4]

Sheet 3 Appendix to "B"

Taxes $29,705.00
(See Pages 6 and 25, Ex. No. 4, F. B. & D.)

Depreciation:

See Transcript of Testimony of Mr. Kimball on Pages 93, 94 and 95. Hearing Dates Dec. 12 and 13, 1928.

Estimated Annual Allowance Necessary for Extraordinary Maintenance (See P. 28, Ex. No. 4, F. B. & D.):

Central Kentucky Natural Gas Co., Inc.	$12,878.00	
Lexington Utilities Co., Inc.	8,384.00	
Total		$21,262.00

[fol. 231-c] CARTER EXHIBIT No. 10

[fol. 231-c-1]

Rate of Return for Lexington District (Central Kentucky Natural Gas Co., Inc.) (Lexington Utilities Co., Inc.)

Assuming:

(A) Various Values for "Lexington District" of Central Kentucky Natural Gas Co., Inc., and of Lexington Utilities Co., Inc., combined,
(B) 1926 operating expenses,
(C) Sale price of gas to be 60c/M cu. ft.
(D) 750,000,000 cu. ft. of gas purchased at 40c/M cu. ft.
(E) Balance of gas for total system purchased at 12½c/M cu. ft.
(F) Allocate to Lexington District its portion of total gas purchased and used.
(G) Consider Lexington Utilities property as a part of the integer.
(H) Net Revenue available for return—$400,551.57.

Valuation Bases:

	Rate of return
I. Carter appraisal of physical property as of Dec. 31, 1926, —$1,435,224	28.5%
II. Lexington portion of purchase price of Central Kentucky Natural Gas Co. Inc. plus Carter appraisal (Lexington Utilities)—$1,913,157	21.4%
III. Carter appraisal of physical property, plus Kimball intangibles—$1,687,897	24.3%
IV. Jirgal's cost of reproduction depreciated to Carter conditions —$1,504,587	27.2%
V. Jirgal's cost of reproduction depreciated to Kimball Condition—$1,799,626	22.8%

[fol. 232] List of Exhibits Filed Herewith

Company Exhibit No. 4.
Company Exhibit No. 6.
Company Exhibit No. 8.
Company Exhibit No. 9.
Carter Exhibit No. 7.
Carter Exhibit No. 8.
Carter Exhibit No. 10.

[fol. 233] Wherefore Central Kentucky Natural Gas Company, plaintiff and appellant, prays that the above

statement of evidence be settled, approved and allowed by the above-entitled court as a true, full and correct and complete statement of all the evidence on which this cause was submitted and essential to the decisions of the questions presented on appeal to the Supreme Court of the United States.

Dated January 16th, 1933.

D. L. Hazelrigg, Chester J. Gerkin, Henry T. Duncan, Attorneys for Plaintiff.

Service of the foregoing proposed statement of evidence and a receipt of and copy thereof this — day of January, 1933, is hereby admitted and acknowledged.

Robt. H. Winn, C. M. Harbison, Attorneys for City of Lexington et al. ——— ———, Governor of Kentucky. ——— ——— Attorney General for Commonwealth of Kentucky.

[fol. 234] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY, MOSES R. GLENN, Oscar Vest, and James Thatcher, Members Constituting said Railroad Commission; Bailey P. Wooton, Attorney General of the Commonwealth of Kentucky; City of Lexington, a Municipal Corporation, and S. B. Featherston, Individually and as Representing All Other Persons Similarly Situated, Defendants

AMENDMENTS PROPOSED BY THE APPELLEES TO THE APPELLANT'S STATEMENT OF THE EVIDENCE FOR THE APPEAL—Filed March 9, 1933

Lodged Jan. 31, 1933. S. W. Stacey, Clerk.

To the Clerk of the above-styled court:

In addition to the "condensed statement of pleadings before the Railroad Commission of Kentucky and evidence

essential to decision of questions presented on appeal" filed by the Central Kentucky Natural Gas Company in this cause on Monday, January 16, 1933, the appellees respectfully state that the following papers and testimony are also essential to a decision of the questions presented by this appeal; and you are requested and directed to take and make a transcript thereof to be filed in the Supreme Court of the United States pursuant to the appeal allowed herein, to-wit:

1. The gas purchase contract between the Central Kentucky Natural Gas Company and the United Fuel Gas Company of date of the first day of November, 1912, and as amended under date of the 15th day of July, 1913, being Exhibit No. 20 of the Central Kentucky Natural Gas Company's gas purchase contracts filed herein.

2. The gas purchase contract between the Central Ken- [fol. 235] tucky Natural Gas Company and the Kentucky Cities Gas Company of date of the 23rd day of July, 1920, with the amendments thereto filed as gas purchase contract No. 18 in the record herein.

3. The gas purchase contract between the Central Kentucky Natural Gas Company and the Bed Rock Petroleum Company of date of the 20th day of November, 1918, and filed as Exhibit No. 25.

4. The gas purchase contract between the Central Kentucky Natural Gas Company and the Hillsdale Gas Company of date of the 24th day of January, 1924, and filed as Exhibit No. 24.

5. The gas purchase contract between the Central Kentucky Natural Gas Company and Lewis Vincent of date of the 20th day of April, 1925, and filed as Exhibit No. 16.

6. The lease-hold contract between the Central Kentucky Natural Gas Company and the Lexington Gas Company, now Lexington Utilities Company, of date of the 15th day of December, 1905, and being Exhibit No. 21 of the Central Kentucky Gas Company's Exhibits filed herein.

7. An excerpt from the magazine "Hail Columbia" for the month of March, 1929, filed as an exhibit with the depo-

sition of D. C. Hunter taken in this cause before the Railroad Commission of Kentucky on March 11, 1929, and marked "D. C. Hunter No. 1" for identity, which excerpt is in words and figures as follows:

HUNTER EXHIBIT 1

"Know Columbin System

Maps showing the territory in the states of New York, Pennsylvania, Maryland, Kentucky, Ohio, West Virginia, and Indiana and some of the 1,962 communities served with gas and electricity by the operating companies of the Columbin Gas & Electric Corporation are presented as a supplement to this issue of Hail Columbin for the information and study of its readers.

Distributing gas to a population of more than five million people in the above states by means of 23,897 miles of field, transmission and distribution pipe lines with the aid of [fol. 236] compressors totalling 183,950 horsepower at 103 compressor statjons to 1,004,208 consumers, and electric power and light service from three major generating plants and several stand-by-stations with a total capacity of 450,695 k. v. a. over 8,573 miles of electric transmission and distribution lines, by means of 98 substations to 304,861 consumers in Southern Ohio and Northern Kentucky, Columbia System provides a unified, interconnected combination of super-fuel and super-power service."

Also exhibit No. 2 with said deposition of the said D. C. Hunter in nature the map referred to in the foregoing excerpt from said magazine.

Further as to said map Exhibit "Hunter No. 2" the Appellees respectfully represent and state to the Court that it is necessary for correct determination of this case, that the said original map and exhibit should be inspected by the Supreme Court, and that this Court and the presiding judges thereof so order and make such rule or order for the safe keeping and transporting of said exhibit as a part of the record in this cause to the Supreme Court, and for the return thereof to this Court as to this Court and the judges may seem proper; all as is made and provided in

Rule 10, Sub-section 4 of the Supreme Court of the United States.

8. Two certain letters of date of January 25th, 1929 and January 29, 1929, addressed by the Central Kentucky Natural Gas Company through T. J. Tonkin, Jr., its Vice President, to Mr. D. C. Hunter, filed in the record by consent on March 11, 1929, and which are in words and figures as follows:

No. 1

"Central Kentucky Natural Gas Company, Inc., 140 West Short Street, Lexington, Kentucky

January 25, 1929.

Mr. D. C. Hunter, Attorney, 700 Security Trust Building, Lexington, Kentucky.

[fol. 237] DEAR SIR: In compliance with your request, wish to advise that on December 31, 1926, there were in use in the City of Lexington, 9,143 gas meters; on December 31, 1928, there were 9,741. These figures do not include meters in use in sub-division-adjacent to but outside of the corporate limits.

Yours very truly, Central Kentucky Natural Gas Company, (Sgd.) T. J. Tonkin, Jr., Vice-Pres.
TJT:V."

No. 2

"Central Kentucky Natural Gas Company, Incorporated, 140 West Short Street, Lexington, Kentucky

January 29, 1929.

Mr. David C. Hunter, Assistant Corporation Counsel, Lexington, Kentucky.

DEAR SIR: Complying with your request made in your letter this date, wish to advise that on December 31, 1928, this Company had 940 meters in use in suburbs and subdivisions adjacent to, but outside the corporate limits of

Lexington. On December 31, 1928, this number had increased to 1,379.

Yours very truly, Central Kentucky Natural Gas Company, (Sgd.) T. J. Tonkin, Jr., Vice-Pres. TJT:V."

[fol. 238] 10. The testimony of LUCIEN BECKNER. condensed and in substance as follows:

I have been engaged in geological work for about twenty odd years, representing in the last ten or fifteen years in such work the Atlantic Refining Company, the Superior Oil Corporation, the Louisville Gas and Electric Company, the Texas Oil Company, a number of smaller ones and probably large ones that I do not now recall. My duties have been to determine geological conditions favorable or unfavorable for the production of oil and gas in Indiana, Mississippi, Texas, Oklahoma and Kentucky, largely in Kentucky. I have taken occasion to investigate the natural gas reserves in the eastern Kentucky fields. In pursuit of this investigation I have visited every county in that district and the geological strata in each of them by personal observation. I have traveled through them for some thirty odd years. I know practically all of that territory. I have put into table form the result of my investigation in these counties as to natural gas reserves, which table I now file as a part of my testimony, marking same "Beckner No. I". The left hand column names the counties; the figures in the right hand column, 1,129,937,880, represents the total of the gas reserves in the named counties in thousands of cubic feet, i. e., my estimate is that there are in these counties 1,129,937,880 thousands of cubic feet of gas. I make the following statement of my study and investigation:

"The following study is made for the purpose of determining the amount of gas underground in Eastern Kentucky, which may be made available for use by economic methods of production.

The plan adopted is to consider each "sand" or producing horizon serially, from the lowermost or oldest to the uppermost or youngest; outlining the area of each, subtracting therefrom those portions of each area which, for reasons hereafter set out, are deemed nonproductive or

nonworkable, and crediting what is left with a certain amount of gas per acre; which amount is determined by [fol. 239] the history of production from the "sand" considered. Conservatism was maintained by granting the lowest possible factor of production and a ruthless delimitation of the possible producing area.

When this study was begun it was the intention to base the results to be achieved on area, thickness and porosity of the "sand", or pay streak, in each formation which has proven productive; but the most exact, prolonged, and careful search for all known data on the Eastern field shows that there are not enough to do this. There are so few data on thickness because most often the "sand" is not drilled through, the drilling stopping in the top of the "sand" because there occurs the flow of oil or gas. There are no data on porosity; and while a porosity might have been assumed, such assumption would not have had the concrete value which the historic production, the method adopted, will have.

Over a large part of the field no exploration has been done, but the geologic conditions underlying such areas are generally well known, making it possible to say that they are part of a region which has the same geologic history, is underlaid by the same geologic horizons, filled with the same kind of rocks in about the same proportions which were laid down at the same time and in the same sea, as are and were the rocks of the area which has been explored. On this account the statement that they will be found to contain like proportions of oil and gas is not an assumption based on opinion alone, but a simple statement of known facts and, so far as human mind can see, their inevitable interpretations.

In delimiting the possible areas regard was had to the outcrops of the various formations discussed, their thicknesses as displayed by their outcrop and well measurements; the changes, if any, of the character of their sediments; their structure or altitudes, and their historic performances when drilled. All of which is set out below.

[fol. 240] The Sands

The Cambrian rocks in Kentucky are so deep seated they cannot be reached by the drill economically and so will not be considered.

The Ordovician

The Ordovician rocks have produced the "Trenton" oil fields of Ohio, Indiana, and Southern Kentucky and Tennessee. In Ohio, where they have done best, they are overlaid by the Utica black shale, a formation of carbonaceous content as much as 300 feet thick, from which many think its oil and gas are derived. On the outcrop of the Trenton in Kentucky this shale is missing; but going eastward it will be found in the deep wells, the 3,900 foot well at Denton, in Carter County, stopping in the first five feet of it; and wells elsewhere in Eastern Kentucky, even as far west as Powell County, showing black shales at about this horizon. However, the Trenton "sand" dips under from the surface in Fayette, Clark, Franklin, etc., to over 3,900 at Denton, making its exploration very costly, unless close to its western outcrop, and there it is not overlaid by the carboniferous Utica shale; or, if so, where it is very thin; also, little is known about the structure of this deep "sand", making its drilling as yet a precarious affair. Because of these facts the Ordovician sands are not included in the totals; but there can be little doubt but that they will produce gas in this State as they have elsewhere. The Lyons well in Menifee is said to have found a large gas flow in rocks of this age. Above the Trenton, in the Ordovician, are other "sands" which produce oil and gas in southern Kentucky. The great fold or buckle in the Ordovician rocks which occurs about 40 to 50 miles east of the axis of the Cincinnati geanticline (about the distance of the Lyons well mentioned above), might prove a valuable location.

[fol. 241]

The Silurian

Above the Ordovician lie the Silurian rocks. The Clinton oil and gas sand of Ohio is of this age, but the Silurian rocks of Kentucky have been rather small producers of commercial quantities of the hydrocarbons, unless the deeper "sands" of Allen, Warren, and Barren are Silurian, a thing which is not definitely known. In Eastern Kentucky a small Silurian oil pool was developed in Bath County, at Olympia, and in a few other places they have made shows. Because of this and the fact that the Silurian

rocks show that the age in which they were deposited was, in this part of the world, one of little rainfall, in which thin limes and red shales were deposited, poor in plant and animal life, the source of oil and gas, Silurian gas not included in the ultimate figures set out herein.

The Devonian

Arid conditions ended with the Silurian age and on top of the Silurian rocks lie limestones, dolomites and rich carbonaceous shales of the Devonian age. Consequently this age has a number of rich oil and gas horizons. At its base comes the Big Six "sand" of Breathitt County. This is a conglomerate dolomite, known on its outcrop as the Stormville Conglomerate. It has proven a rich producer in Breathitt, but is so deeply seated that it has not been explored, save in a very few wells, in the counties east; and seems to disappear in the counties west. It was found in the wells at Hendricks and the Whittaker well, both in Magoffin.

Above the Big Six is a limestone known as the Corniferous, of Onondago age, in which is a producing horizon known to the drillers as the Irvine or Campton or Canel City "sand". This is producing throughout the State wherever structural and outcrop conditions permit and where it has been drilled. The old Menifee gas field is in it. It was in an effort to reach it that the overlying black shale was found to be so rich in gas.

[fol. 242] This shale known as the Ohio and Chattanooga to the geologist and merely "black shale" to the driller is from five to seven hundred feet thick where it is producing, and towards the northeast includes beds of sandstone from five to fifteen feet thick, in which the gas is found and which the drillers around Ashland are calling the "Gordon sand". In the south these sand lenses do not occur but the gas is found in the shale itself as it is in Meade County in Western Kentucky. Its producing record in the eastern field is too short to permit much definiteness and, therefore, its cubic foot-acre content is given very low. But the wells at Ashland have a remarkable history and the old Refitt well in Floyd has produced—wasted—a vast amount of gas; and the wells in Meade County, Western Kentucky, are marvels. One of the latter is the Smith well, drilled in 1888

and blew open until July, 1891, when it was connected with the pipeline. It was disconnected from March till June, 1897, because of legal quibbles, since which it is a steady producer. In 1892 its closed pressure rose to 64 lbs. In May, 1899, it tested 31 lb. rock pressure and 267,750 cubic feet open flow. In August, 1911, it was 24 lbs. and 103,500 open flow. And in January, 1929, its last test, it showed 25 lbs. and 168,000 cubic feet. Its first measurement after it came in in 1888 showed 1,140,000 cubic feet per day.

In spite of the records of the Big Six, the Irvine and the Black Shale, the Devonian is credited with very small acre content, because of its depth eastwardly, and the consequent ignorance of conditions economic and geologic, which indicate conservatism in statement. It could safely be given twice as much or perhaps three times.

The Mississipian

The Mississippian "sands" are so many and rich that they have had to be divided into three vertical divisions. [fol. 243] The lowermost, called herein the Lower Mississippian, contains in the eastern part of the district the Berea and Wier, and in the southern part, the Beaver Creek. They have produced quantities of gas in favored locations, but have been drilled altogether for oil, the probable gas locations being avoided. On account of the lack of information such a history promotes, these "sands" are given a very small—almost negligible—cubic foot-acre factor. One good field in either of them would make as much gas as the whole district is accorded.

The Middle Mississippian

The "sands" under this heading are the Big Lime, Keener, Big Injun, and Squaw. Their names bring up memories of great production in nearby West Virginia and they have produced in places in Kentucky; but their history in the western margin of the Kentucky field, where they have been drilled to and where they are quite shallow, has been such that it was thought safer to follow the record of that section rather than that of the West Virginia section; although conditions in the eastern margin of the Kentucky field approach nearer to West Virginia. Therefore, they have been given the lowest cubic foot-acre value

of the whole list, making for them a showing which they have doubtless already exceeded with a very small exploration.

The Upper Mississippian

Above the last lie a series of sands and shales, with an occasional limestone, of Chester age, filling the vertical space between the Big Lime and the base of Pennsylvania or coal bearing series. The gas in them occurs in the sandstone lenses, which are from 10 to 100 feet thick, averaging about 50 feet. The amount of gas they have produced in the last few years, from a restricted area, is very large. They have been the standby of the Kentucky producer, until the recent black shale development. On this account their historic value is so well understood that they have [fol. 244] been given the largest cubic foot-acre factor of any, making their total reserves the greatest, although their areal extent is low. This advantage they have because their shallowness has induced their exploration, which has supplied the needed information. The names of these sands are Maxon and Bradley. They are so much alike that the drillers do not always know them apart, causing the well records to be slightly mixed at times, but the effect is just the same.

The Pennsylvanian.

Above the last lie the shales, sandstones, and coals of the Pennsylvanian age. The "sands" are sandstones of from 30 to 300 feet thick, and are named, in the eastern area Beaver, Horton, Pike and Salt; and in the southern area, Wages, Jones, Epperson. Of these, perhaps, the Salt Sand has proven the best producer; but the drillers are apt to call any thick sand at the base of the Pennsylvanian, which produces gas and salt-water, the Salt Sand. However, one, at least, of these basal Pennsylvanian sands, nearly always produces gas. In the past salt water, which practically always accompanies it, has injured these wells; but today better handling is caring for the gas and eliminating the water problem. The sands have been given a medium cubic foot-acre factory only because ultra conservatism prompts it.

Structure

General structural conditions in eastern Kentucky are now known; and their relations to oil and gas production are fairly well understood. In delimiting the field of any particular "sand" advantage has been taken of all published data on structure and such private data as was deemed trustworthy and was available. If errors have been made they are of small amount and are to be found in the deeper "sands", which have been given reduced cubic foot acre values to compensate.

[fol. 245] Summary of Methods

The methods of arriving at the figures set out in the table are in brief as follows:

A. Giving each group an estimated cubic foot-acre value as follows:

1. Devonian, Silurian, and Ordovician (the latter two really nothing), 100 thousand cubic feet per acre.
2. Lower Mississippian, 25 thousand.
3. Middle Mississippian, 10 thousand.
4. Upper Mississippian, 400 thousand.
5. Pennsylvanian, 100 thousand.

B. Eliminating all acres in each county:

1. Where the "sand" is not well covered and at a safe distance from the outcrop;
2. Where the logs do not reveal sufficient thickness of producing "sand";
3. Where the history of exploration shows no production;
4. Where depth to the "sand" is over 5,000 feet;
5. Where exploration has been accomplished;
6. Where major synclinal conditions preclude the probability of gas productions.

C. Eliminating whole counties:

1. Where reserves are too low for commercial exploration;
2. Where from a consideration of depths, pressures and amounts would be too low for getting into pipelines or permit building of compressors;

3. Where structural conditions preclude;
4. Where exploitation is already accomplished;
5. Where there is not thickness of "sand".

D. Eliminating 25% of the Devonian and lower because its limited area of exploration does not permit of application of items 2, 3, and 5 in Section C above.

[fol. 246] **Example**

That the figures above are ultra conservative might be shown by many examples in the field. One is found in Floyd County where the table herein gives 65 billion cubic feet from all sands; whereas, the companies operating there are contracted to supply more than that and practically all of them are supplying it, from the Upper Mississippian and Salt Sands.

The Table

The following table sets out compactly the estimates of reserves by counties, made in accordance with the rules above set out. It is not intended for a statement of the possible or probable gas production of the future; had that been the intent the figures could have been swollen to much larger totals with considerable plausibility; but the intent has been to be so conservative as to not mislead but throw such light of truth, on a question of importance to all, as the known data permit. In making such a table there is and should be an allowable margin of error; but the conservatism of statement in these figures obviates danger from such a source because if certain localities should be credited with gas where future drilling finds none, the purpose-full under-statements will make good such deficiencies. The figures represent thousands of cubic feet, running the total to over one trillion.

The table to which I have above testified and filed as "Beckner No. 1" is as follows:

[fol. 247]

BECKNER EXHIBIT No. 1

	Counties	Devonian	Low. Miss.	Mid. Miss.	Up. Miss.	Pennsylvanian	Total
1.	Pike	18,048,000	8,512,000	4,377,600	155,648,000	9,728,000	196,313,600
2.	Leslie	19,056,000	6,352,000	2,540,800	101,632,000	25,408,000	154,988,800
3.	Letcher	3,456,000	44,564,000	1,782,560	71,302,400	15,597,400	136,702,360
4.	Perry	20,076,000	4,824,000	1,920,800	77,184,000	2,140,000	106,144,800
5.	Knott	12,225,600	4,910,400	1,309,440	52,377,600	13,104,400	83,927,440
6.	Floyd	23,181,000	4,404,400	235,360	30,201,600	7,550,400	65,572,760
7.	Knox	12,672,000	2,816,000	675,840	27,033,600	6,758,400	49,955,840
8.	Clay	18,645,600	3,756,000	1,462,400		14,264,000	38,128,000
9.	Carter	26,136,000	4,120,000	824,000			31,080,000
10.	Martin	10,308,000	1,408,600	573,400	17,203,200		29,493,200
11.	Laurel	17,203,200	7,504,400	863,100		2,867,200	28,437,900
12.	Greenup	21,337,800	4,070,400	203,520			25,611,720
13.	Whitley	14,872,000	7,298,800				22,170,800
14.	Pulaski	18,086,000	2,412,800				20,498,800
15.	Boyd	14,580,000	1,600,000	448,000			16,628,000
16.	Magoffin	13,530,000	480,000				14,010,000
17.	Breathitt	13,824,000					13,824,000
18.	Lewis	13,716,550					13,716,550
19.	Elliott	11,266,000	1,224,000	163,200			12,653,200
20.	Jackson	11,793,600					11,793,600
21.	Rockcastle	10,323,800					10,323,800
22.	Rowan	9,072,000	216,000				9,288,000
23.	Owsley	8,569,550		695,500			9,265,050
24.	Morgan	9,000,000					9,000,000
25.	Johnson	3,320,850	851,200				4,172,050
26.	Menifee	3,820,800					3,820,800
27.	Wolfe	3,442,350					3,442,350
28.	Wayne	2,961,000					2,961,000
29.	Lawrence		1,496,600	897,960			2,394,560
30.	Lee	1,920,000					1,920,000
31.	Powell	1,698,900					1,698,900
	Total	368,142,600	112,821,600	18,973,480	532,582,400	97,417,800	1,129,937,880

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[fol. 248] I further state that from my experience as a geologist and from my actual information as gained from these visits to these sundry counties and from my investigation of geological conditions there, the foregoing figures in my judgment run under the actual reserves.

There are other gas bearing sands than those named in my table to which I have not given the reserve value to which I think they are entitled. There is the Black Shale which is producing in quantities mostly along the Big Sandy tier of counties. I have attempted to put nothing in this table about sands lying underneath the Devonian. There are such sands like the Trenton which we have in Kentucky, but about which we don't know very much because it is very deep, and we have not drilled to it. My table does not include this Trenton sand which is producing in nearby states.

I have gone over and familiarized myself with the amount of gas consumed annually here in Kentucky by the customers of the Central Kentucky Natural Gas Company and the wholesale companies to which it sells, and as well in the City of Louisville which draws its gas in large part from West Virginia and Eastern Kentucky. The total annual consumption in the roughest sort of way is about 10 million feet annually drawn from both Kentucky and West Virginia. If all of this gas were drawn from Kentucky and continued at the same figure of consumption and if my reserve figures are right, there would be about 100 years of consumption and production in and from the Kentucky supply.

Q. Mr. Beckner, are you at all familiar with the prevailing price of natural gas at wholesale in the eastern section of the state?

A. Probably I am, yes sir.

Q. Are you now connected with the Louisville Gas and Electric Company?

A. I receive a retainer from them.

[fol. 249] Q. Do you have occasion at present to be informed about the gas situation and gas prices?

A. In a general way I do. I gather that up from the ones I meet.

Q. From your knowledge and from what you gather up, what would you say was the present average wholesale

market price of gas obtaining in Eastern Kentucky for natural gas?

A. Between ten and twelve cents; might be a little more in West Virginia, but in Kentucky that is about right."

11. The exhibit put into the record known as the Holly W. Stevenson Exhibit, in nature a letter from E. Reynolds, Jr., Vice-President of the Columbia Gas and Electric Corporation of date January 18, 1929 to the Security Trust Company of Lexington, Kentucky, "Attention of Mr. Holly W. Stevenson, Bond Department", dealing with the sale of the stock of the Central Kentucky Natural Gas Company to the Columbia Gas and Electric Corporation, which exhibit and papers are as follows:

HOLLY W. STEVENSON EXHIBIT

"Columbia Gas & Electric Corporation, Wilmington, Del.,
61 Broadway, New York

Edward Reynolds, Jr., Vice-President & Secretary

January 18, 1929.

Security Trust Company, Lexington, Kentucky.

Attention of Mr. Holly W. Stevenson, Bond Department

DEAR SIRS: I acknowledge receipt of your letter of January 16, 1929, requesting a copy of the circular letter to the stockholders of Central Kentucky Natural Gas Company offering them the right to exchange their stock for [fol. 250] Preferred Stock of Columbia Gas & Electric Corporation.

We did not send out any such notice directly, but our contract for the purchase of the Central Kentucky stock was made with certain of the large stockholders, and provided that they would transmit the same offer to the other stockholders, subject to a charge of $1.00 per share of Central Kentucky stock to cover expenses.

There are enclosed for your information copies of a letter dated November 17, 1927, sent out by the three principal officers of the Central Kentucky Company to their stockholders, a letter of instructions sent to the stockholders by Pittsburgh Trust Company as depositary and

the form of covering letter sent out by the depositary to be returned with the certificates and showing the two alternative methods of computing the number of shares of Columbia Preferred Stock and the cash adjustment for fractions, which I trust will give you the information you want.

Yours very truly, E. Reynolds, Jr., Vice-President.

HHP:CK.
Enc.

Central Kentucky Natural Gas Co. (Incorporated)

Oil City, Pa., November 17, 1927.

To the Stockholders of the Central Kentucky Natural Gas Company:

Your Board of Directors desires to recommend the acceptance of the offer described in the Secretary's notice of meeting of stockholders enclosed herewith and your approval and acceptance of the reorganization plan calling for an exchange of 60,000 shares of stock of the Central Kentucky Natural Gas Company at the rate of one share of Preferred Stock of the Columbia Gas & Electric Corporation for 2¼ shares of the stock of the Central Kentucky Natural Gas Company, on terms and subject to the provisions described in said notice.

This plan of reorganization or exchange of shares was approved by the Board of Directors unanimously. One of the conditions of the acceptance was that an opportunity be given to each stockholder of the Central Kentucky Natural Gas Company to exchange his stock under this plan of reorganization, subject to the payment in stock or money of his proportionate share of the expenses and charges as will necessarily be incurred in carrying out the plan of reorganization outlined, which charges and expenses by agreement have been liquidated at $1.00 per each share of Central Kentucky stock exchanged thereunder.

The strong position of the Columbia Company is well known. Its shares are listed and regularly quoted on the New York Stock Exchange, and full information regarding its properties and standing is readily available.

We call your attention to the fact that you are at present receiving on your Central Kentucky shares, dividends [fol. 251] at the rate of 37½¢ per share per quarter. By accepting Columbia Gas & Electric 6% Preferred Stock you will immediately receive an increased return of more than 70%. If this plan is accepted you will receive on the Preferred Stock of the Columbia Company, for which your stock is exchanged, the quarterly dividend of $1.50 a share on February 15, 1928, and the next dividend on your Kentucky Company stock, payable on January 15, 1928, will go to the Columbia Company. The adjustment which would otherwise be chargeable against you, will be absorbed in the $1.00 per share expense above mentioned.

We are informed by counsel that the proposed exchange of stock will result in no profit or loss to our stockholders taxable under the Federal Income Tax Laws.

We feel it is very desirable that the stockholders authorize, ratify and confirm the approval and acceptance of the reorganization plan submitted and that the stock should be fully represented at the stockholders meeting, so if you are unable to attend in person you are requested to execute enclosed proxy and mail it in the stamped envelope enclosed herewith to the Secretary of the Company.

Very truly yours, (Signed) Joseph Seep, Chairman of the Board. (Signed) John Tonkin, President. (Signed) Robert S. Hampton, Secretary & Treasurer.

Pittsburgh Trust Company, Pittsburgh, Pa.

Member Federal Reserve System

Capital Surplus and Profits: $4,600,000.00

Depositary Agreement

To the Stockholders of the Central Kentucky Natural Gas Company:

The Pittsburgh Trust Company agrees to act as Depositary of your respective Stock certificates and to exchange them for Certificates of Preferred Stock of the Columbia Gas & Electric Corporation pursuant to the offer of that company on the following terms and conditions:

[fol. 252] 1st. Your Certificates should be endorsed in blank for transfer (and in case the Depositor is acting as an executor, or in other fiduciary capacity, accompanied by proper proof of authority) and mailed by Registered Mail, or delivered to the Depositary company at the above address without delay. Certificates not received prior to the 30th day of December, 1927, may be refused and returned.

2nd. The depositor authorizes the Depositary to buy sufficient fractions from other Depositors to make a full share where his fraction of a Preferred share is one-half or more, and similarly to sell his fraction to another Depositor where less than one-half, the price of the fraction bought or sold to be determined by the market price of such Preferred stock at $108.00 per share.

3rd. The charge of One Dollar per share (which covers the entire cost and expense of negotiating this Reorganization Plan and of exchanging Certificates, including commission, attorney's fees, transfer or stamp tax, printing and postage, adjustment of dividends and the Depositary's charge and expenses), if not paid by the Depositor by check at the time of the deposit of his Certificates, will be taken care of by a proper proportionate deduction in making the exchange.

4th. If, for any reason, the exchange of Certificates is not made on December 30, 1927, the date agreed upon, the Depositor agrees to leave his Certificates on deposit with the Depositary until the exchange is made, or until February 1, 1926, after which date, on request in writing made by the Depositor, the Depositary agrees to return the Depositor's Certificates to him by Registered Mail.

5th. The depositary will promptly notify each stockholder as soon as the exchange has been made, and of the amount, if any, due from him on account of the purchase for his account of any fractional shares, and if no amount is due, or upon payment thereof, will deliver or mail by Registered Mail to them respectively their Preferred share Certificates with a check for any amount due from the sale of any fractional shares.

6th. The depositor understands that the Depositary assumes no obligations other than those above set out, except the exercise of due and reasonable care hereunder.

7th. A copy hereof will be forwarded to each stockholder by your company's secretary, accompanied by a form of letter showing the computations made in your particular case and for your use in forwarding your Certificates to the undersigned Depositary. Receipt of your Certificates will be promptly acknowledged.

Respectfully, Pittsburgh Trust Company, by J. H. McGinnity, Secretary.

[fol. 253] (Please use this form in forwarding certificates for deposit.)

Pittsburgh Trust Company, Depositary, 323 Fourth Avenue, Pittsburgh, Pa.

Dear Sirs: I enclose endorsed in blank for deposit under the Depositary Agreement received herewith, the following Stock Certificates for capital stock of the Central Kentucky Natural Gas Company:

No. of certificates	Name	No. of shares

Total number of shares _____

The above total number * of shares checks with the number shown below.

I choose Plan "A" below:
"B"

Plan "A"

10* shares appearing on books in my name, exchange 2¼ for 1 of Columbia Gas & Elec. 6% Pfd. give 4.4/9 shares.

*If this figure does not check please ask for corrected computation.

**If your choice not indicated, and unless check is enclosed for $1.00 per share plus or less cost of fractional shares, Depositary will assume Plan "B" is accepted by you."

Share of expense of $1.00 per share is $10.

Buy (if above fraction is ½ or over) of 1 share Columbia Gas & Electric at 108.

Sell (if above fraction is less than ½) 4/9 of 1 share Columbia Gas & Electric at 108, $48.

Total payment under plan "A", $38.

Pfd. Stock Certificates of Columbia Gas & Elec. are to be forwarded to me for 4 shares.

Plan "B"

2¼ shares of your stock for 1 share Columbia Gas & [fol. 254] Elec. at 108 gives $48 per share, less $1.00; my share of expense gives $47 net. Your 10 shares at $47 gives $470.

$470 divided by 108 gives 4.35 shares Columbia Gas & Electric.

Buy (if above fraction is ½ or over) of 1 share Columbia Gas & Elec. at 108, $——.

Sell (if above fraction is less than ½) .35 of 1 share Columbia Gas & Elec. at 108, $37.80.

Total credit under Plan "B", $——.

Pfd. Stock Certificates of Columbia Gas & Elec. are to be forwarded to me for 4 shares.

Respectfully,——.

12. Balance sheets taken from the books of the Central Kentucky Natural Gas Company and filed by Mr. T. J. Tonkin, Jr., as Exhibits "T. J. Tonkin 1926" and "T. J. Tonkin 1927" are as follows:

[fol. 255]

EXHIBIT "T. J. TOMKINS, 1926"

Central Kentucky

Trial Balance Dec. 31, 1926

Assets

Plant account:			
General	$2,719,791.25		
Winchester City Plant	88,984.65		
Mt. Sterling City Plant	43,554.53		
Johnson-Magoffin Line	23,455.37		
Red Bush Line	25,982.96		
Red Bush Compressor Station	69,270.31		
Red Bush Wells	64,065.32		
		$3,035,104.38	
Less Depreciation to Dec. 31, 1925		1,456,400.65	
			$1,578,703.73
Liberty bonds			1,000.00
Cash in banks			34,191.92
Cash impounded in trustee banks:			
First and City National	45,524.34		
Guaranty Bank & Trust Co	67,859.22		
Total Lexington		113,383.56	
The Winchester Bank		25,690.26	
Traders National (Mt. Sterling)		13,890.10	
			152,963.92
Value of gas stored:			
To Dec. 31, 1925: 3,351,561 M. cu. ft.		389,340.77	
During 1926: 314,632 M. cu. ft.	45,747.60		
Contingent Value Gas Stored 1926	10,188.53		
		55,936.13	
Total 3,666,193 M. cu. ft.			425,276.90

Material and merchandise:			
Lexington		4,562.45	
Winchester		1,378.97	
Mt. Sterling		610.60	
			6,551.02
Accounts receivable:			
From Consumers:			
Lexington	82,843.41		
Winchester	18,892.51		
Mt. Sterling	9,721.38		
		110,857.30	
From Shop Sales:			
Lexington	1,708.59		
Winchester	1.50		
		1,710.09	
From Disbursing Agents:			
H. J. Hutchinson, Agent	1,174.97		
J. T. Hastings, Agent	27.92		
T. J. Tonkin, Agent	220.52		
T. J. Tonkin, Supt.	793.61		
		2,166.18	
From Others:			
Blue Grass Natural Gas Co	1,602.90		
Kentucky Utilities Co	7,338.95		
Hillsdale Gas Co	25,272.04		
Miscellaneous	379.65		
		34,593.54	
			149,327.11
Contingent accounts receivable:			
Blue Grass Natural Gas Co		1,063.87	
Kentucky Utilities Co		14,185.87	
			15,249.74
Expenses:			
General		92,287.09	
Field and Main Line		77,276.73	
City Plant		61,899.68	
Lexington Plant Rental		59,720.11	
			291,183.61

[fol. 256]

Contingent expense:			
Lexington Plant Rental			15,228.90
Expense—Gas Purchased			386,953.24
Contingent Expense—Gas Purchased			66,905.25
Profit and Loss Suspense			63,730.98
Dividend Account			90,000.00
			$3,277,236.27

Liabilities

Notes payable:			
Oil City Trust Co			$300,000.00
Accounts Payable:			
Meter Deposits:			
Lexington		$6,045.00	
Winchester		828.00	
Mt. Sterling		58.00	
			6,931.00
Unclaimed Meter Deposits			14.25
Other accounts payable:			
Red Rock Petroleum Co.		1,034.95	
Boston & Southwestern Oil & Gas Co		592.30	
Carroll Oil and Gas Co		1,648.65	
East Kentucky Oil Co		198.49	
Eastern Kentucky Oil Co		143.50	
Fearless Oil & Gas Co		124.70	
George & Touma		615.73	
J. T. Hare & Son		294.00	
Hilladale Gas Co. (Gas Account)		9,547.80	
Alemander Kelly		410.70	
Kentucky Cities Gas Co		1,101.37	
McNabb & Cheuvront		180.20	
Martin Oil & Gas Co		188.30	
Petroleum Exploration Co		557.25	
Portamouth O. K. Gas Co		148.80	
Pu-John Oil Co		453.10	
United Fuel Gas Co		12,462.60	

Lewis Vincent		215.40	
Lexington Utilities Co		1,620.22	
U. S. Internal Dept		13.20	
Frankfort, Kentucky Natural Gas Co		24,568.80	
Miscellaneous		7,463.16	
			63,583.13
Unpaid Taxes			12,371.62
Contingent Accounts Payable:			
Lexington Utilities Co		15,228.90	
United Fuel Gas Co		47,756.30	
Hillsdale Gas Co		18,683.83	
Kentucky Cities Gas Co		3,684.22	
Petroleum Exploration Co		2,824.12	
Red Rock Petroleum Co		4,145.31	
			92,322.68
Earnings:			
Gas		895,071.14	
Gasoline		11,235.70	
Shop		6,091.31	
Miscellaneous		585.70	
Interest		1,481.41	
			914,465.26
Contingent gas earnings:			
Lexington	$121,600.46		
Lexington Suburban	8,558.95		
Winchester	29,378.41		
Mt. Sterling	15,685.20		
		175,223.02	
Sales to other companies		15,249.74	
			190,472.76
[fol. 257]			
Bad Debts Collected			79.43
Profit and Loss			196,996.14
Capital Stock			1,500,000.00
			$3,277,236.27

EXHIBIT "T. J. TONKINS, 1927"

Central Kentucky Natural Gas Company

Balance Sheet, December 31, 1927

Assets

Property Account		$3,106,472.07
Liberty Bonds		1,000.00
Cash	$8,650.77	
Accounts Receivable, Customers	110,761.67	
Accounts Receivable, Others	86,925.95	
Materials & Supplies	8,761.36	
Value of Stored Gas	511,287.50	
		726,387.25
Prepaid Accounts		2,370.66
Contingent Accounts:		
Lexington Plant Rental	29,826.82	
Gas Purchased	140,165.27	
Accounts Receivable, Customers	49,456.31	
		218,448.40
Cash Impounded in Trustee Banks		309,005.42
		$4,363,683.80

Liabilities

Capital Stocks		$1,500,000.00
Notes Payable	$380,000.00	
Accounts Payable	104,109.82	
Accrued Taxes	66,493.90	
		550,603.72
Customers' Deposits	7,146.00	
Other Deferred Liabilities	28.40	
		7,174.40
Renewals, Replacements and Depletion		1,662,062.69

[fol. 258]

Contingent Account Payable	188,401.81	
Contingent Gas Earnings	358,461.73	
		546,863.54
Surplus		96,979.45
		$4,363,683.80

13. Excerpts from the testimony of John T. Kimball as taken under a cross-examination by Counsel for the City of Lexington on December 12-13, 1928. "I am that same John T. Kimball of the Ford, Bacon and Davis organization, who compiled the tables used in the valuation and return testimony for the Central Kentucky Natural Gas Company in this cause.

Q. Mr. Kimball, I think we would get along much better if we understand in the beginning that what you testify about is matters of your own knowledge and not what you get second-hand from other people. Have you any personal knowledge of whether Ford, Bacon & Davis have any

monetary interest in the Lexington Utilities Company?

A. The only way I could obtain that knowledge is by having them tell me, and they said they had none.

Q. Do you know of your own knowledge?

A. They told me they did not.

Q. We ask the Commission to exclude the hearsay evidence.

A. Yes, you must only tell what you actually know.

Q. While we are on the question of this hearsay knowledge, you filed Exhibit No. 1 and Exhibit No. 4 with your testimony, which we have here at this time. A good many statements are made in the opening remarks about the valuation shown in Exhibit No. 1. Do you undertake to say that the matter shown in Exhibit One is true, of your knowledge?

[fol. 259] A. All of the statements contained in Exhibit No. 1—and I personally dictated all of the text accompanying that exhibit—were prepared by men working under my direction. In the compilation of unit prices, before those unit prices were applied to an inventory, they passed over my desk and I had an opportunity to review them; but I didn't give a personal check, didn't sit down and make up every figure and go through every figure in Exhibit No. 1. With that explanation, Exhibit No. 1 is my report.

Q. To be a little more explicit, I find on page four of Exhibit No. 1, to illustrate, that the Central Kentucky Gas Company produced during the year ending December 31, 1926, 220,148,000 cubic feet of gas. Have you any personal knowledge as to the accuracy of that statement?

A. That statement was taken from a report compiled by the Company from its measurement of gas.

Q. So you haven't any personal knowledge of that?

A. No, I didn't measure the gas.

Q. I find on the next page the statement that in the Red Bush Field there are 1,135 acres of leased territory. Have you been to the Red Bush Field?

A. No.

Q. I find the further statement that they had twenty-nine producing gas wells of an average depth of 795 feet. Have you seen and counted those wells?

A. I have counted the logs which showed the materials in those wells, at least a man under my direction did so.

Q. You didn't even do that personally?

A. No.

Q. And whether there are twenty-nine, forty, or fifty, you have no personal knowledge?

[fol. 260] A. Except as some man under me reported to me.

Q. In your inventory, I find a small item, but one worthy of note, perhaps, that you have inventoried at the Menifee Field certain live stock as property of the Company. How did you ascertain that this live stock was the property of the Central Kentucky Natural Gas Company?

A. In all matters of that kind we have to be guided by information which is handed to us by the Company.

Q. Were you handed any such information by the Company?

A. Only verbally expressed by them.

Q. To you?

A. To my representative.

Q. As a matter of fact, if it chanced to be true that that live stock was not owned by the Company but is the personal property of Mr. T. J. Tonkin, Sr., the father of the Vice-President of the Central Kentucky Natural Gas Company, then whoever gave you that information deceived you, did he not?

A. On that hypothesis.

Q. Have you any knowledge of your own as to whether or not the figure 29 or the figure 27.4 are the correct figures for that pipe?

A. I didn't personally look at the pipe.

Q. Did you look at the Company's books to ascertain what size pipe they bought and paid for when the pipe was laid?

A. That was done by men working under my direction.

[fol. 261] Q. And you undertake to say that they found out by the Company's books that that was 29 pound pipe?

A. That is what they reported to me.

Q. And you, of course, don't know that that is correct and don't undertake to say?

A. No.

* * * * * * *

Q. Let's turn again, seeking for accuracy, to page 103 of your Exhibit No. 1. You have listed at Winchester, Kentucky, as property of the Company two Ford cars, one of them No. 8380144 and the other 13316505. Did you see these cars yourself and get the numbers from them?

A. No.

* * * * * * *

Q. Now, just as a matter of instance, you have listed these two cars, one of them as being a 1923 model runabout and the other a 1926 model Ford of the same type runabout, with box body. You have valued them jointly at $799 and have taken off $100 depreciation apparently on each car. Is that correct?

A. No.

Q. Then what have you done?

A. There has been $240 taken off as depreciation for the two cars.

Q. All right; how much of that applies to the 1923 model?

A. I would have to refer back to our working papers, and will do so if you desire, if I haven't them here in the room. They consist of eighteen envelopes and thousands of sheets.

Q. You do undertake to tell the Commission that in your judgment two Ford cars which you have never seen, one of them purchased in 1923 and the other purchased in 1926, at the end of December, 1926, had depreciated in value only [fol. 262] $120 each?

A. No, I don't attempt to say that at all; the two cars together had depreciated $240.

Q. How much then did the 1923 car depreciate?

A. I have told you that I would have to refer to the working papers and advise you later.

Q. But you don't know anything yourself about its condition, good or bad?

A. I didn't see the car.

Q. You are willing, however, to state as a matter of fact that those two cars had only depreciated $240 during that time?

A. That was the information of the man that reported it to me.

Q. That wasn't your opinion based on your observation at all?

A. No, sir.

* * * * * * *

Q. Did you get the freight rates yourself?

A. No.

Q. You don't know what the correct freight rates were then save as they were reported to you by somebody else?

A. That is right.

Q. To what points did you estimate the deliveries of this pipe in your freight charges?

A. To the most convenient sidings from which pipe could be hauled to the plant.

Q. What were those sidings?

A. I don't have a list of them; they are in my working papers. I could look them up; they are in my working papers.

Q. But you yourself don't know where the pipe was hauled to?

[fol. 263] A. Except as in the working papers.

Q. And you yourself have not undertaken to get a freight rate to those points?

A. I have not personally done so.

* * * * * * *

Q. You will understand that the purpose of the examination so far has been, in a large part, to test your own personal knowledge of these matters. Did you go to the various points where this pipe might have been unloaded and make any examination as to labor costs?

A. I didn't personally do this work. It was done under my direction.

Q. Did you attend yourself to the ascertainment of the cost of any hauling in that territory to the nearest depots, to the place where the pipe was to be deposited finally?

A. That same remark that I just made applies to that.

Q. Where were you when this work was being done, in so far as you know that it was being done, where were you physically?

A. I was here one day or so, something like that, but I can't recall now where I was all that time.

Q. By "Here" do you mean Frankfort?

A. In Lexington, Kentucky.

Q. One day, possibly two?

A. I don't remember now.

Q. Not exceeding two days?

A. I don't think so.

. . . . . .

Q. Have you made any effort to ascertain what in fact the company did pay for the Rights of Way?

A. I haven't ascertained that; but these prices, I have [fol. 264] no doubt, were more than the company would have had to pay twenty-odd years ago, before a farmer knew anything about them going through his territory.

. . . . . .

Q. Now, you have valued the entirety of the property as under your figures at $4,715,434, which during twenty years of life you have depreciated to $4,280,627—or deteriorated. What per cent of deterioration is that during the twenty years of the life of the Company?

A. Well, that isn't quite the way to express it.

Q. Do you mind calculating and telling what percentage $434,867 is of $4,715,434?

A. I will make the computation for you. (The witness does so.) That is 9.4 per cent.

Q. Which during the twenty years meant that the entire properties of the Companies, according to your estimates here, have deteriorated slightly under one-half of one per cent per annum.

A. Absolutely not. I can come here thirty years from now, and if the Company continues, it will be in that same relation, and as the property wears out it substitutes new property, so that it remains the same practically from year to year.

. . . . . .

Q. What do you mean, "amortization"? What is the ultimate end of building up and creating that fund?

A. Amortization is to return to the owners of the property the value of that property after, for natural gas purposes, it is fully depleted and it then has no further value as a natural gas utility.

Q. And you have taken that in this instance at twenty years?

[fol. 265] A. I have predicted these figures on an estimate of twenty years.

Q. And what rate of per cent have you utilized in using an annual charge of $94,668?

A. I have assumed that that sum would be invested in Federal Government securities, which would yield around 3½ per cent, and that plus the interest accretions at the end of the twenty year period would add up to the amortizable value of the property, which would at that time have no value.

Q. So that is what you mean by amortization fund?

A. Yes.

Q. At the same time that you build up this amortization fund, you make an outlay of earnings each year of $20,000 necessary to keep the property in A-1 condition?

A. That is right.

Q. Is that justifiable?

A. Yes.

Q. To cover the cost in both ways, take out amortization fund on your property and also take out a fund to keep the property in 100% condition each year?

A. Of course, the amortization fund is not to take the place of the property, but to take care of the securities and hand it over to the owner at the end of twenty years. The $20,000 is to take care of the depreciation.

* * * * * * *

Q. Do you know anything about the sale of the Central Kentucky Natural Gas Company to the Columbia Gas and Electric Company since this franchise was entered into?

[fol. 266] A. I merely know that there was an exchange of securities.

Q. Do you know at what price per share the capital stock of the Central Kentucky Natural Gas Company, of one million five hundred thousand dollars of capital, was sold to the Columbia Gas and Electric Company?

A. It was not sold for cash, I understand; just an exchange of securities.

Q. Do you know at what price, at what rate, that exchange was made?

A. Two and a quarter shares of Central Kentucky Natural Gas Company stock exchanged for one share of Columbia Gas and Electric Company stock.

Q. The rate was figured out at $43 per share for the Central Kentucky Natural Gas Company stock?

A. I don't know that; I have never seen anything to that effect except that exchange that I have just mentioned.

Q. And what time was that exchange made, if you know?

A. I don't know that.

Q. It was shortly after the purchase and sale of that franchise at Lexington, wasn't it?

A. It was subsequent to that.

Q. And at a time when the earnings of the Central Kentucky Natural Gas Company were open for lawful ascertainment by this body?

A. Yes; I don't believe there was any hearing had, but they must have had knowledge that this hearing was coming before it.

Q. And upon the assumption that a fair rate would be had before this body?

A. Of course I can't assume what they assume.

Q. The par value of their stock was $25; upon my assumption that it was exchanged upon a basis of $43, that would be upon a par basis of about $173 on the Hundred, [fol. 267] would it not?

A. Your computation is correct.

Q. And as a result of it then the $1,500,000 of capital stock of the Central Kentucky Natural Gas Co. would make a purchase price that the Columbia Gas & Electric Company paid to the Central Kentucky Natural Gas Co. for all of its stock, that is of the Central Kentucky Natural Gas Company's, of $2,580,000; is that correct?

A. Your arithmetic is right.

* * * * * * *

Q. Have you in your files a balance sheet of the Central Kentucky Natural Gas Co., taken from its books as reflecting its condition on December 31, 1926 and December 31, 1927, or either or both of these years?

A. I think we have, but I can't state definitely as to that. (After looking for same.) I have before me the balance sheet as of December 31, 1927.

Q. Was that taken from the books of the Company, as you understand it?

A. That is my understanding of it.

Q. Will you please tell the Commission whether there appears upon that balance sheet any fund, however, it may be styled, which has been accumulated, as taking care of the retirement of this Company through amortization?

A. They have a reserve for renewals, replacements and depletion of $1,662,062.69, according to this balance sheet.

Q. That, of course, has been built up from earnings, or income, at least?

A. That is just a bookkeeping entry, Judge.

[fol. 268] Q. What is the purpose of it as a bookkeeping entry?

A. It is beyond me; I can't understand it either.

Q. Since it is beyond both of us, let's just theorize about it a little.

A. All right.

Q. If the Company has already provided a fund, of the $1,662,000, towards taking care of the ultimate retirement of its property, loss of its property, might we not take that as a basis and figure what that at your 3½% would amount to at the end of the next twenty years, and ascertain from it that the Company had otherwise provided for the retirement of its stock?

A. We would have to inquire whether or not the owners of the property had enjoyed a fair and reasonable return on the value of the property devoted to the service of the public during the period in which this was built up.

Q. Then when we had made that ascertainment, whatever might be left over and above this $1,662,000 should be applied at a fair and reasonable rate of compound interest towards taking care of this Company's property under your twenty year theory of this Company's ultimate destruction.

A. If the Company has earned a fair and reasonable return, and has likewise earned a sum in excess thereof which

would permit it to amortize its property, naturally I don't want them to amortize it the second time.

* * * * * * *

[fol. 269] Q. Have you any information of your own as to undeveloped supplies of natural gas in Eastern Kentucky, particularly in the Big Sandy Fields?

A. No, I am not familiar with the geology of that.

Q. And you don't undertake to say that there are supplies of gas there that will last indefinitely?

A. No, I am not prepared to say that.

Q. Of course if there were such supplies there it would destroy to a large degree the amortization theory which you set out for a period of twenty years?

A. Of course if I was convinced that there was an indefinite supply it would change my figures.

* * * * * * *

The following excerpts are from the testimony of JOHN T. KIMBALL, taken on March 14, 1928:

"I didn't take a tape line in the field and measure the pipe line. I didn't inspect a single compressing station. I didn't solicit a single quotation from any dealer in materials. I didn't interview a single dealer in materials. I didn't go to the books and records of this company. That was all done by men in our organization who reported to me."

The Central Kentucky Natural Gas Company has about 112 miles of ten inch transmission line which extends east from Lexington to Inez, near the Virginia boundary. There is a four inch line in Montgomery County which carries the gas from the main transmission line into that city where the company distributes gas to the customers in Mount Sterling. It serves Winchester, in Clark County, directly from the main line. Just west of Winchester a branch transmission six and one-fourth inch line extends north to Paris, Kentucky, where gas is sold at the city gate. Off this main line there is a branch line extending to [fol. 270] Middletown, Kentucky, belonging to a separate company, however, to which the Central Kentucky sells gas at wholesale. Westward from Lexington to Frankfort, Kentucky, is a pipe line belonging to the Frankfort

Natural Gas Company, to which company the Central Kentucky Natural Gas Company supplies gas at wholesale at Lexington.

* * * * * * *

"As property wears out, the Company is continually replacing it. It must do so in order to efficiently conduct its business. If it permitted the property to entirely wear out, it would have to go out of business. It could not supply the gas. So that, taking the property as a whole, it remains in practically the same condition from year to year, by reason of the replacements and extensions, that is, the expenditures made upon it during the year. Therefore, while we find that the property is thus and so say of today, if we came back ten years from today, through the operation of replacement and maintenance, the property would still be in practically the same condition as it was found to be today.'"

* * * * * * *

During the winter months of 1926 the company drew from the gas stored in the Menifee Field which cost them an average of 11.9¢.

* * * * * * *

On page 17 of my Exhibit 4 for Ford, Bacon & Davis is an allocation of the gas purchased to the Lexington District. It is all done in the ratio that the sales in Lexington bear to the sales in the entire system.

14. An excerpt from the testimony of W. G. von Gemminden as given on April 26, 1928:

[fol. 271] I have a degree of Bachelor of Science from Rock Hill College in Maryland. I spent several years in post graduate work at the University of Gottingen, in Germany. I have been an engineer for the construction of pipe lines for the Tidewater Oil Co. I have studied from 1903 to 1911 a condition of physical railroad properties. I worked in the Steinway Tunnels under the East River. I have been engaged in valuation work on three gas plants in New Jersey. For the Electric Bond and Share Company of New York I have made studies of the corrosive effect of water on metal alloys. I have been engaged in the con-

struction of gas and chemical plants and a superintendent of the gas manufacturing plant in Brockton, Mass. and did considerable work in installing steel and wrought-iron magnets. I have been engaged in the expert operation of gas and chemical plants and have had general supervision of the operation of plants at Meriden, Conn., Holyoke, Mass., Derby, Conn., New Haven, Conn., Brockton, Mass., and Baltimore, Md. Since 1921 I have been associated with Messrs. Ford, Bacon & Davis, engaged among other things in making valuation reports and inspected and determined for rate making purposes the deterioration in a number of gas systems..

"Time in itself is not a factor of deterioration. It has been my experience in inspecting a number of gas systems, covering the Middle West and South West, that there is a point when deterioration practically no longer becomes a factor, this point being the balance between replacement and maintenance as against the forces of deterioration. In other words, you can depreciate a single unit of an operating system, but the whole system does not in a practical depreciation meet a certain point, because maintenance offsets depreciation, or deterioration, I meant to say."

[fol. 272] 15. An excerpt from the testimony of Mr. T. J. TONKIN given at the taking of December 12th and 13th, 1928:

I am the General Manager of the Central Kentucky Natural Gas Company. About a year or so before December, 1928, the Central Kentucky Natural Gas Company abandoned its contract with the Kentucky Cities Gas Company.

On January 1, 1928 the temperature was down about zero here in Lexington.

16. A condensed excerpt from the testimony of JOHN JIRGAL, given at the taking of March 11th and 12th, 1929:

I went to the books of the Central Kentucky Natural Gas Company and to the books of the Lexington Utilities Company, and from these books I found the following, after adjusting the items of cost to the price conditions at the end of 1927, to be as follows: Total property cost of the Central Kentucky Natural Gas Company, $1,664,961.95; Total property cost of the Lexington Utilities Com-

pany, $463,757.39; Total cost of both properties, $2,101,719.24.

Embraced within the item of $1,664,961.95 was the sum of $81,987.32 additions in 1927; so to get this cost for the year 1926 we deduct this $81,987.32 from the $1,664,961.95, which leaves as the cost of the property of the Central Kentucky Natural Gas Company as of December 31, 1926 to be $1,582,974.63.

Embraced within the item of $436,757.39 as the cost of the Lexington Utilities Company's property at the end of 1927 there is included an item of $53,604.73 additions during 1927; so in order to ascertain the cost of the Lexington Utilities Company's property as of December 31, 1926 there is to be deducted the sum of $53,604.73 from the sum of $436,757.39, leaving the adjusted cost of the Lexington Utilities Company's property as of December 31, 1926 to be $383,152.66.

The result of this is that the combined cost of the prop- [fol. 273] erties on December 31, 1926 was $1,966,127.29.

The method I used was to ascertain the actual cost of the property, "the actual cost expressed in 1926 dollars rather than dollars of the purchasing power at the time the property was actually put in".

These figures manifest nothing of depreciation. They are as the property would stand today, without anything having been taken off for depreciation.

"Q. In the ascertainment of the value in your Exhibit No. 1, the ascertainment was based upon fact or theory?

A. Facts.

Q. Gotten, again, where?

A. Gotten from the records of the Company.

Q. And your bringing them down to the present day conditions was gotten from where, if I may repeat?

A. For the most part from the Company's records.

Q. From its own experience?

A. Yes sir.

Q. And the 1926 values of the properties from where?

A. From the company's experience."

17. A condensed excerpt from the testimony of E. L. Carter, given at the taking of March 11, 1929:

My name is E. L. Carter, a consulting engineer by profession, specializing in utility valuation work. I am a

graduate, Bachelor of Science, Electrical Engineer, of Purdue. I had three years in the Engineering Department of the Western Electric Company, eleven years in the Engineering Department of the Public Service Commission of Indiana, first as an assistant and finally as Chief Engineer. Since that I have been in private practice. Practically the entirety of my time in the public service work was devoted to the valuation and investigation of public utility properties. I had complete charge for the commis- [fol. 274] sion of the valuation of the Indianapolis Water Company's properties under the case which went up to the Supreme Court and is known as the Indianapolis Water Works case. I have made appraisals of practically every public utility in Indiana, gas, water, heating and otherwise. I have worked with the Interstate Commerce Commission in reviewing the valuation of the Pennsylvania and Vandalia Railroad in Indiana, Ohio and Pennsylvania.

Under retainer from the City of Lexington I made appraisals of the Central Kentucky Natural Gas Company's properties and of the Lexington Utilities Company's properties under lease by the Central Kentucky Natural Gas Company. I have made a complete appraisal of such properties, and I have filed herein a report of my appraisal. That one of the Central Kentucky Natural Gas Company made as of December 31, 1926 shows the property of that company allocated to the Lexington District thus:

	Estimated cost of reproduction as of December 31, 1926	
	Cost of reproduction	Cost of reproduction depreciated
Total physical property	$1,295,124.00	$936,015.00

My appraisal of the property of the Lexington Utilities Company devoted to the natural gas service in Lexington as of the same date runs thus:

	Estimated cost of reproduction as of December 31, 1926	
	Cost of reproduction	Cost of reproduction depreciated
Total physical property	$591,277.00	$499,209.00

These figures are taken from my Exhibits 3 and 4 before the Railroad Commission of Kentucky.

[fol. 275] My total appraisal of all the physical properties of the Central Kentucky Natural Gas Company, before applying depreciation, was $2,467,127.00, and the total cost of all the properties of the Central Kentucky Natural Gas Company as depreciated by me was $1,784,194.00. The appraisal figures and as reproduced above were of all of the properties of the Lexington Utilities Company, all of which were used in supplying Lexington.

In doing this work I was in the office of the company at Lexington. I was clear through the entire length of the pipe line from Inez to Lexington. I saw it opened and exposed in excess of sixty individual places. I saw the compressor stations. I went over parts of the gathering line. I checked each well in the Menifee field, listing the amount of pipe, drilling and the amount of miscellaneous fittings as to each well. I compared them with the original log sheets. I checked the price of drilling from the actual drilling costs in the records of the Central Kentucky Natural Gas Company at Charleston. I got the costs of tubing and casing from the suppliers of various accounts of materials. We secured from the company a map showing all of the pipe lines and collecting lines. These we checked in the field by an actual field inspection both as to size of pipe and measurements taken to verify the lengths. The labor costs reflected in my report are those gotten from the field superintendent of the Central Kentucky Natural Gas Company. I got the other rate cost from the Chesapeake & Ohio Railway Company and the rate books of other lines from Pittsburgh to the various points in this investigation. My appraisal truly reflects them. I checked the cost of buidings with the Builders' Supply House of Mount Sterling, Kentucky, the nearest point of any consequence. I obtained the quantities of the various pipes from a field survey of the physical property and from the records of [fol. 276] the original purchase and deliveries of the quantities of pipe from the book of the company.

Q. I would like to ask you whether you have so far checked over and gone over the results of your work as for you to be willing to put behind it your own judgment and your own faith as to its accuracy?

A. I think it is accurate, reasonably so within human limits.

* * * * * * *

Q. Will you please state to the commission whether as an academic fact it is possible for any man to say exactly how much a piece of pipe had depreciated?

A. It is not, no sir.

Q. So a statement in percentages of depreciation is at best a reflection of human experience and human judgment; is that correct?

A. It is and necessarily must be so.

* * * * * * *

Q. Do these items here, these figures here at the right hand side of page 5 manifest what is your best human judgment as to what is the present value of these properties after applying depreciation and considering the factors which you have named and considering the location and use of the various and sundry properties?

A. They do.

* * * * * * *

Q. Have you had occasion to review the depreciation figures of Mr. Kimball who has appeared and testified for the Central Kentucky Natural Gas Company?

[fol. 277] A. I have, yes sir.

Q. Have you figured from his testimony what his depreciation percentage is for the twenty years that these properties have been in life?

A. I have.

Q. What is his percentage of depreciation?

A. His percentage of depreciation is approximately 9%.

Q. Over all?

A. Over all, yes sir.

* * * * * *

When I was in the Menifee fields in 1928 I saw evidence in the field of considerably more than 100 places where repairs had been made for leaks and there were others yet to be made. I saw on the main line a leak stake numbered 348. Some of the repairs remained yet to be made when our investigation was being conducted. In appraising the Lexington Utilities Company's property I actively aided in and supervised the work. I saw its pipe exposed in approximately 25 places. I did the same sort of work in the investigation and appraisal of these properties as I did those of the Central Kentucky Natural Gas Company.

In addition to the cost of the pipe and the cost of the labor and the cost of the freight and the cost of the sundry items that go to make up the physical items of all the properties, I have added for the Central Kentucky Natural Gas Company an additional sum of $319,603.00, and for the Lexington Utilities Company an additional sum of $77,123.00. These items are what are called "Undistributed Capital Expenditures" by which I mean such costs as are incurred in the actual building of the property which are not taken care of in the unit prices applied to the various items of inventory. It embraces an allowance of [fol. 278] 15% which has been made on the total of all items inclusive of material and supplies to cover engineering, omissions in taking inventory, contingencies, administration, legal expenses, insurance and taxes and interest during construction from actual construction experience and from a study of various jobs, it has been found that an allowance of 15% is a reasonable allowance to take care of costs of this character.

I found that the gas sales in Lexington were 56.55% of all the sales of the company.

The total number of meters in use as of December 31, 1926 in the Lexington District was 10,101.

Since I made my appraisal the Central Kentucky Natural Gas Company has commenced to supply the Cities of Georgetown and Cynthiana, Kentucky. They are supplying these towns from their already existing lines. The effect of this is to decrease the value of the properties allocable to the use in the Lexington District because the lines would be used for other purposes with the same factor of use in Lexington.

In the progress of this work I visited the Big Sandy Valley in Kentucky, Paintsville and Prestonburg in that state and Huntington and Charleston in West Virginia. I visited the gas trade generally and inquired to ascertain the wholesale price of gas. I found it to range at the well from 10¢ to 13¢.

In making my calculation as set up in Exhibits 7 and 8 I took my "1926 operating expense and revenues" from Exhibit #4, filed by Ford, Bacon and Davis. In other words, I adopted for the purpose of this calculation Messrs. Ford, Bacon and Davis' manifestation of expenses. In the gas purchase costs in this computation I have included 750,-

000,000 cubic feet a year from the Petroleum Exploration Company at forty cents a thousand, and the balance of it at twelve and one half cents, all allocated them on the percentage of 56.55 basis as named above for Lexington.
[fol. 279] This calculation was made at the request of the City and its attorneys.

In making this computation I took Mr. Jirgal's historical cost of reproduction and depreciated it to the Carter condition and allocated to the Lexington District as above. I also took Mr. Jirgal's cost of reproduction and depreciated it to the Kimball condition. In my Exhibit #8 I followed the same method except that I treated the properties of the Central Kentucky Natural Gas Company allocable to Lexington and those of the Lexington Utilities Company as one entire property. I have made these figures myself and put myself behind them.

Q. Mr. Carter, in order that we may understand just what has been presented to the Commission, will you state whether or not you have made an appraisal of prices and conditions and information for the year 1926 or some other year?

A. The inventory in so far as we were able to ascertain was made for December 31, 1926. The unit prices are as of that particular date for labor and material.

. . . . . .

Q. I was considering the figure to which you apply your 12½¢. The amount of gas to which you apply the 12½¢ excludes the "Pet-Ex." gas, doesn't it?

A. Yes.

Q. Now in using that figure, what value have you placed upon existing contracts of this company by the supplying of gas by various independent purchasers?
[fol. 280] A. I have taken in those computations all gas excepting the 750,000 M. cu. ft. purchased at 40¢ per M. cu. ft., at 12½¢ per M. cu. ft.

. . . . . .

Examination by Robt. H. Winn, Esq.:

Q. Mr. Carter, upon your cross-examination you were asked about why you adopted the 12½¢ per thousand as the

purchase price of gas in your per cent of return calculations to which your exhibits 7, 8 and 10 pertain now as revised. You were led to say and did say that you made use of that figure at my request. And then your attention was directed elsewhere. I desire to ask you whether or not before utilizing that figure, there had been discussion between you and me as to the propriety of its use?

A. There was a considerable amount of discussion.

Q. I will ask you now, please, to turn to Kimball Exhibit No. 4, page 14. (The witness does so.) That sheet purports to be a summing up of gas purchases for the five years immediately preceding December 31, 1926, the date to which our inquiry was addressed. That exhibit further purports to give the amounts of gas purchased, the prices at which purchased, and the quantities purchased at the several prices. I beg to ask whether or not we have made a calculation and before we utilized the 12½¢, whether we did make a calculation resulting in an average over all for the cost of that gas, excluding the United Fuel Supply.

[fol. 281] A. Yes, sir; we did.

Q. What was the result per thousand as demonstrated by Mr. Kimball's exhibit that the gas purchased for the five years before December 31, 1926, excluding the United Fuel, cost the company, the Central Kentucky Natural Gas Company, per thousand?

A. A fraction over 13 cents.

Q. 13.2 cents to be exact?

A. I think that is the exact figure.

Q. Were you, before the 12½¢ was arrived at and at least in that calculation, requested to make any independent examination of your own in the gas fields of Eastern Kentucky as to the selling price?

A. I was; yes, sir.

Q. And did you make that examination?

A. I did.

Q. You testified, I believe, to that on your main examination?

A. I think I did; yes, sir.

Q. And the result was?

A. The price as I recall was 10 to 12 cents.

Q. Since that time, I believe, you have had, as well the benefit of whatever Mr. Beckner may have said upon the subject?

A. I have.

Q. But didn't have that at the time we took the 12½ cents?

A. That is correct.

Q. And is it upon these calculations and investigations, rather than upon any arbitrary requests upon my part that you utilize the 12½ cents as a fair cost price of the gas?

A. That is correct.

* * * * * * *

[fol. 282] In my reproduction valuation I have included these items from Mr. Kimball's set-up:

Going concern value	$171,712.00
Cost of obtaining new franchises	36,705.00
Working cash capital	44,256.00
Total	$252,673.00

My total appraisal $1,189.00 (round figures) for the Lexington properties is made up of these items:

Estimated allowance for materials purchase price, plus the cost of freight, cartage, and labor of put-ing the physical property in the ground	$816,033.00
Kimball's intangibles, as above	252,673.00
Fifteen per cent on the first item for "Undistributed Capital Expenditures"	120,783.00
Total over all	$1,189,489.00

* * * * * * *

18. The testimony of W. J. Hightower, condensed and in substance, is as follows:

My name is W. J. Hightower. I live at Charleston, West Virginia. I am the Assistant Treasurer and Assistant Secretary of the Central Kentucky Natural Gas Company and hold the like position with some ten other companies which are a part of the Columbia Gas and Electric Corporation, known as the Charleston group. I am the chief ac-

counting officer for the Central Kentucky Natural Gas Company. Before I came into the organization as a part of the Columbia interest, I had been identified with the Columbia interest, and as a result of the Columbia's purchase of the Central Kentucky Natural Gas Company I became identified with the Central Kentucky Natural Gas Company as of December 1, 1927. Referring to the depreciation item of $1,456,400.63 shown as an asset in T. J. [fol. 283] Tonkin Exhibit Balance Sheet 1926 and to an item of "Renewals, Replacements and Depletions $1,662,-062.69" shown as a liability of the Central Kentucky Natural Gas Company as of December 31, 1927, I explain that "in figuring up depreciation and depletion it is simply a bookkeeping entry and does not necessarily mean that there was actually that much depreciation in connection with the property or depletion. The amount is usually determined by the income tax report. I think it is common practice to show this account on the liability side of the sheet. The old company happened to show it on the asset side of the sheet."

19. So much of the Mount Sterling, Kentucky, Franchise Contract, dated July 13, 1927, filed herein as "Exhibit Mount Sterling" as is in words and figures as follows:

EXCERPT FROM MOUNT STERLING FRANCHISE CONTRACT

"Section 23. The company agrees, and such agreement is a condition upon which the franchise is granted, that it will begin or cause to have begun within three months after this franchise becomes effective the construction of, and have in operation or cause to be operated within twelve months thereafter, a main line or lines of pipe from adequate sources of supply of natural gas in the state of Kentucky or in the state of West Virginia so connected as to supply natural gas in the distributing system in the City of Mount Sterling; said main line or lines shall be of sufficient capacity and shall be provided with sufficient and adequate compressor stations and other necessary equipment to supply such quantities of natural gas as may be required to enable the company to comply with the terms of this franchise. Provided, however, that if the company shall have a ten-inch transmission pipe line which is being used for transporting natural gas from the eastern part

of the state of Kentucky to the City of Mt. Sterling, then the company shall begin or cause to have begun within six months after this franchise becomes effective the construction of, or have in operation or cause to be operated [fol. 284] within nine months thereafter an additional main line or additional lines of pipe from adequate sources of supply of natural gas in the state of Kentucky or in the state of West Virginia so connected as to supply natural gas in the distributing system in the City of Mt. Sterling; said additional main line or lines shall be of such capacity and shall be provided with sufficient and adequate compressor stations and other equipment to supply such additional quantities of natural gas as may be required to enable the company to comply with the terms of this franchise. "If the construction and operation of the additional line of pipe as herein provided be delayed by cause or causes beyond the control of the company, such delay shall not be considered in estimating the time within which the same shall be constructed and put in operation. It is especially reserved and provided that should the company fail to have said two pipe lines constructed and supplying gas as herein provided, the city may, upon six months' written notice to the company, declare this contract at an end."

List of Exhibits Filed Herewith

Gas purchase contract between the Central Kentucky Natural Gas Company and the United Fuel Gas Company, being gas purchase contract No. 20 of the record herein.

Gas purchase contract between the Central Kentucky Natural Gas Company and the Kentucky Cities Gas Company, being gas purchase contract No. 18 of the record herein.

Gas purchase contract between the Central Kentucky Natural Gas Company and the Bed Rock Petroleum Company, being gas purchase contract No. 25 of the record herein.

Gas purchase contract between the Central Kentucky Natural Gas Company and the Hillsdale Gas Company, being gas purchase contract No. 24 of the record herein. [fols. 285-287] Gas purchase contract between the Central Kentucky Natural Gas Company and Lewis Vincent, being gas contract No. 16 of the record herein.

Lease-hold contract between the Central Kentucky Natural Gas Company and Lexington Gas Company (now Lexington Utilities Company), being contract No. 21 of the record herein.

A map filed with the deposition of D. C. Hunter as "Hunter No. 2."

Wherefore the Appellees pray that the above additions to the evidence as suggested and condensed by the Appellant may be allowed, settled and approved by the above entitled Court as a proper and true addition to the evidence required and demanded by the statement of the Appellant and as a proper and essential part of the evidence and record in this case to be presented on appeal therein to the Supreme Court of the United States; and further that this Court and the judges thereof, as is provided in Rule 10, Sub-section 4 of the Supreme Court of the United States, make an order directing the transmission, as a part of the record on said appeal, of the map "D. C. Hunter No. 2" hereinbefore referred to and as well for the safe keeping, transporting and return of the said paper.

Dated January 31, 1933.

Robt. H. Winn, C. W. Harbison, Bailey P. Wooson, S. H. Brown, Attorneys for Appellees.

Service of the foregoing proposed amendments to the record and statement of the evidence as made by the Appellees to be used on the appeal of this case to the Supreme Court of the United States and the receipt of a copy thereof this first day of February, 1933, as hereby admitted and acknowledged.

D. L. Hazelrigg, Henry T. Duncan, Attorneys for Central Kentucky Natural Gas Co.

[fol. 288] EXHIBIT TO PROPOSED AMENDMENTS

"This agreement, made and entered into this 1st day of November, A. D. 1912, by and between the United Fuel Gas Company, Incorporated, a West Virginia corporation, hereinafter called the "United Company", party of the first part, and the Central Kentucky Natural Gas Company, Incorporated, a Kentucky corporation, hereinafter

called the "Kentucky Company", party of the second part,

Witnesseth: Whereas, the United Company is the owner of natural gas wells, gas rights and leases for gas purposes, and gas purchasing contracts in the states of West Virginia and Kentucky, and is the owner of a pipe line extending from its natural gas properties through or near the village of Inez, on the waters of Rock Castle Creek in Martin County, Kentucky, and

Whereas, the Kentucky Company is engaged in the business of producing and distributing natural gas in various cities and towns in the State of Kentucky where it is the owner of franchise, and desires to supplement its supply of natural gas by the construction of a ten inch pipe line to the said village of Inez for the purpose of purchasing gas from the United Company;

Now therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto have agreed and do hereby agree as follows:

* * * * * * *

[fol. 289] Third. The United Company undertakes and agrees to sell and deliver to the Kentucky Company and the Kentucky Company undertakes and agrees to purchase and take from the United Company during each year (commencing December 1st and terminating November 30th) of the existence of this contract, natural gas of the volume of not less than 720,000,000 cubic feet, the exact amount deliverable each year to be determined in the manner hereinafter set forth: provided, however, that the United Company shall not be obligated to sell and deliver to the Kentucky Company gas in excess of the amount which can be delivered at Inez Station under a pressure of 300 pounds to the square inch in the initial or Inez end of the said 10 inch line of the Kentucky Company, as now about to be constructed from Menifee County, nor in excess of the amount [fols. 290–292] of gas which the United Company may have available for delivery as limited and defined in the Fifteenth article of this agreement.

* * * * * * *

[fol. 293] Eighth. The Kentucky Company undertakes and agrees that it will pay to the United Company for the natural gas sold and delivered to it by the United Company hereunder, at the following prices:

For all natural gas sold and delivered to it up to and including November 30th, 1913, 9 cents per thousand cubic feet;

From December 1st, 1913, to and including November 30th, 1914, 10 cents per thousand cubic feet;

From December 1st, 1914, to and including November 30th, 1915, 11 cents per thousand cubic feet;

[fols. 294–296] From December 1st, 1915, to and including November 30th, 1915, 12 cents per thousand cubic feet;

From December 1st, 1916, to and including November 30th, 1917, 13 cents per thousand cubic feet;

From December 1st, 1917, to and including November 30th, 1918, 14 cents per thousand cubic feet;

From December 1st, 1918, to and including November 30th, 1922, 15 cents per thousand cubic feet;

And for all natural gas sold and delivered to it from and after November 30th, 1922, during the existence of this contract, a price equivalent to 50 per cent of the average domestic rate in all of the distributing systems of the Kentucky Company, which price shall not in any event be less than 17½ cents per thousand cubic feet, net, to the United Company; such average domestic rate shall be ascertained each month by dividing the total charges of the Kentucky Company for all gas sold during the month for domestic purposes including minimum rate charges for domestic natural gas service but excluding premium charges against consumers delinquent in payments, by the total amount of natural gas sold by the Kentucky Company during the same month for domestic purposes; and in case the Kentucky Company is selling gas to any other company which in turn distributes the gas to the domestic consumer, no account of the rate at which such gas is sold in wholesale quantities by the Kentucky Company or the volume of gas so sold, shall be taken in ascertaining such average domestic rate, but the charges of such distributing company to consumers using gas for domestic purposes and the amount of gas sold by such distributing company for demestic purposes shall be taken into the computations in the same respect as if such gas was being distributed and charged for by the Kentucky Company directly to the domestic consumer.

* * * * * * *

[fols. 297–299] Unless previously terminated pursuant to the provisions herein contained or by mutual consent of the parties hereto, this contract shall continue for the term of twenty years from its date and so long thereafter as the United Company produces gas in marketable quantities from its gas properties in West Virginia and Kentucky.

* * * * * * *

[fols. 300–308] In witness whereof the parties hereto have hereunto caused their corporate names to be signed by their respective Presidents and their respective seals to be hereunto affixed by their respective Secretaries the day and year first above written.

United Fuel Gas Company (Incorporated), by F. W. Crawford, President. Attest: H. C. Reeser, Secretary. Central Kentucky Natural Gas Company (Incorporated), by Joseph Seep, President. Attest: Robt. S. Hampton, Secretary.

[fols. 309–320] EXHIBIT TO PROPOSED AMENDMENTS

July 9th, 1927.

To the Kentucky Cities Gas Company, % B. C. Tynes, President, Robson & Pritchard Bldg., Huntington, West Virginia:

You are hereby notified that the Central Kentucky Natural Gas Company hereby elects to cancel its contract with you dated July 23rd, 1920, as provided in Section 18 thereof, said cancellation to take effect six months from this date as therein provided.

Central Kentucky Natural Gas Company, (Original Signed) by John Tonkin, President.

[fols. 321 & 322] EXHIBIT TO PROPOSED AMENDMENTS

June 29th, 1922.

"Mr. G. C. Davison, Pres. Bed Rock Petroleum Co., New London, Conn.

DEAR SIR: In line with our understanding when I had the pleasure of meeting you in New York last March, we will pay your company thirty (30%) percent of our average

domestic rates in the cities of Lexington, Winchester and Mount Sterling, beginning September 1st, 1922. Our present rate in each of the cities mentioned is forty cents per thousand cubic feet which will make the rate to your company twelve (12¢) cents per thousand cubic feet.

We are filing a copy of this letter with the contract and suggest that you do likewise.

Very truly yours, (Original Signed) W. O. Walker, Vice President Central Kentucky Natural Gas Company.

WOW:NC.

[fol. 323] This contract, made and entered into this 20th day of November, A. D. 1918, by and between the Red Rock Oil Company, a Kentucky corporation, party of the first part, and the Central Kentucky Natural Gas Company, a corporation organized under the laws of the State of Kentucky, party of the second part,

Witnesseth:

* * * * * * *

[fols. 324 & 325] Second. The party of the second part agrees to * * * take and pay for all the natural gas in and underlying said lands, not exceeding five million cubic feet per day during the six winter months, at the rate of eight (8) cents per thousand cubic feet, * * * and second party agrees to take and pay for during the six summer months at said rate of eight cents per thousand cubic feet. * * *

* * * * * * *

[fols. 326-328] Fifth. When the supply of natural gas available for delivery hereunder so diminishes from natural causes such as exhaustion and encroachment of water that the party of the first part is unable to deliver an average of five hundred thousand cubic feet per day during any one of the said winter months, the party of the second part may at its option, upon two months' written notice to the party of the first part, cancel this contract.

* * * * * * *

[fols. 329-334] In witness whereof the parties hereto have hereunto caused their corporate seals to be affixed and the same to be attested by their presidents and secretaries on the day and year first above written.

Red Rock Oil Company (Incorporated), by G. C. Davison, President. Attest: F. L. Braw, Asst. Secretary. Central Kentucky Natural Gas Co. (Incorporated), by John Tonkin, President. Attest: Robt. S. Hampton, Secretary."

[fols. 335-337] Exhibit to Proposed Amendments

"Agreement

This agreement, made and entered into the twenty fourth day of January, A. D. 1924, by and between the Hillsdale Gas Company, a corporation under the laws of the State of Delaware, of Covington, Kentucky, party of the first part, and Central Kentucky Natural Gas Company, Incorporated, a Kentucky corporation, party of the second part,

Witnesseth:

* * * * * * *

[fols. 338 & 339] Sixth. The party of the first part undertakes and agrees that it will sell to the party of the second part so soon as said connecting line is completed, and the party of the second part undertakes and agrees to purchase and take from the party of the first part during each year of the existence of this contract, and beginning with the date of the completion of said connecting line and compressor plant, natural gas of the volume of not less than seven hundred and twenty million (720,000,000) cubic feet.

* * * * * * *

[fols. 340 & 341] Tenth. The party of the second part undertakes and agrees that from the time of the commencement of deliveries it will pay to the party of the first part for the natural gas sold and delivered to it by the party of the first part, the rate or price of twenty (20) cents per thousand cubic feet, and that said rate shall be increased by an amount equivalent to thirty-three and one-third ($33\frac{1}{3}$) per cent of any increase in the net domestic rate

which the party of the second part may hereafter obtain in the City of Lexington, Kentucky.

* * * * * * *

[fols. 342 & 343] Sixteenth. In case the supply of gas available for delivery hereunder to the party of the second part so diminishes that the party of the first part is unable to deliver five hundred thousand (500,000) cubic feet on the average per day during the winter period, namely, from November to April, inclusive, either party shall have the right upon six months' written notice to cancel this contract.

* * * * * * *

[fols. 344 & 345] Nineteenth. Unless previously terminated pursuant to the provisions herein contained or by mutual consent of the parties hereto, this contract shall continue for the term of ten (10) years from the date of the completion of said connecting line, measuring station and compressor plant.

* * * * * * *

In witness whereof the parties hereto have hereunto caused their corporate names to be signed by their respective Presidents and their respective seals to be hereunto affixed by their respective secretaries the day and year first above written, by Central Kentucky Natural Gas Company (Incorporated) and on February 6, 1924, by the Hillsdale Gas Company.

Hillsdale Gas Company, by (Sgd.) Louis J. Dolle, President. Attest: (Sgd.) A. C. Cronin, Secretary. Central Kentucky Natural Gas Company (Incorporated), by (Sgd.) John Tonkin, President. Attest: (Sgd.) Norman E. Clay, Secretary.

[fols. 346–348] Exhibit to Proposed Amendments

"This Agreement, made and entered into this 20th day of April, A. D. 1925, by and between Lewis Vincent, of Pittsburgh, Pennsylvania, party of the first part, and Cen-

tral Kentucky Natural Gas Company, Incorporated, a Kentucky corporation, party of the second part,

Witnesseth:

. . . . . .

[fol. 349] Eighth. The party of the second part agrees to purchase gas from the party of the first part under the terms and conditions hereinbefore specified until such time as in the judgment of the party of the second part it is no longer profitable to maintain and operate its said six and five eighths inch pipe line. This contract shall terminate when second party shall cease to operate its said six and five eighths inch pipe line after which no further liabilities shall accrue and either party may reclaim its property used for the purpose of this contract.

. . . . . .

[fols. 350-359] Witness the signature and seal of the party of the first part and the common and corporate seal of the party of the second part duly affixed and attested by its proper officers the day and year first above written.

Lewis Vincent. (Seal.) Witness: C. B. Vice. Central Kentucky Natural Gas Co. (Incorporated). W. O. Walker, Vice-President. Attest: Norman E. Clay, Asst. Secretary."

[fol. 360] In United States District Court

[Title omitted]

Order Extending Time—Filed Jan. 27, 1933

This day came the parties hereto and filed their stipulation extending time to file the transcript of record on appeal, and the Court being advised, and for satisfactory reasons appearing to the Court, the time for filing the record in this case in the Supreme Court of the United States pursuant to the appeal sued out, is extended until the 28th day of February, 1933.

Chas. H. Moorman, Smith Hickenlooper, Chas. I. Dawson, Judge.

A Copy.

S. W. Stacey, Clerk, by ——— ———, D. C. (Seal U. S. Dist. Court, East. Dist. of N. Y., U. S. of America.)

[fol. 360-a] [File endorsement omitted.]

[fol. 361] In United States District Court

[Title omitted]

Order Extending Time to File Transcript of Record—Filed Feb. 27, 1933

Good cause appearing therefor, it is hereby Ordered that the time within which to prepare the transcript of record on appeal and to docket the appeal of plaintiff in the above entitled suit in the Supreme Court of the United States, be, and the same is hereby enlarged to and including the 15th day of March, 1933.

Dated February 18, 1933.

Chas. H. Moorman, United States Circuit Judge.
Smith Hickenlooper, United States Circuit Judge.
R. M. N. Emory, District Judge.

[fol. 361-a] [File endorsement omitted.]

[fol. 362] Supreme Court of the United States

Statement of Points to be Relied upon and Designation of Parts of Record to be Printed—Filed March 18, 1933

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Court, in this case, are as follows:

Point I

The Court committed error in attempting to determine the validity of the Commission Rate of 45 cents as of December 31, 1926, as of which date there was no con-

troversy as to rates, and in refusing to determine the validity of such rate under the terms and conditions of the franchise contract (under which alone the rate controversy arose), and in refusing to find said rate invalid [fol. 363] and confiscatory as of the dates and period to which the Railroad Commission made said rate to apply, to-wit, the date of the franchise contract (February 25, 1927), the date of the Commission order (October 9, 1929), and the period between said dates. (Errors III, IX and X.)

Point II

The Court committed error in failing and refusing to adopt and apply the value of the rate base determined by it (as of December 31, 1926) to the contract date (February 25, 1927), and as constituting the rate base value for all purposes of this case. (Errors III, IV and V.)

Point III

The Court committed error in failing and refusing to find the following facts, to-wit:

(1) That prior to and at the time of the franchise contract, plaintiff owned and operated a ten inch transmission pipe line for transporting natural gas from the eastern part of the State of Kentucky to the City of Lexington;

(2) That said pipe line was not of sufficient capacity to enable the Company to supply natural gas in sufficient quantities to enable it to comply with the terms of the franchise contract as required by Section 23 of said contract;

(3) That by Section 23 of said contract it was provided that if the company (purchasing the franchise) should have a ten inch line, then said company should within six months begin the construction and have in operation within nine months thereafter, an additional main line of pipe to adequate sources of supply in the State of Kentucky or the State of West Virginia;

(4) That under Section 22 of said contract it was provided that after the Company was furnishing gas through [fol. 364] two pipe lines, as required under the terms of

Section 23, the Company should furnish gas at all times at a uniform and adequate pressure at the outlet of each customer's meter;

(5) That by Section 4(E) of said contract it was provided that the Company should collect a temporary rate of 50 cents (impounding 10 cents) until it was furnishing gas through two pipe lines as required by Section 23, and that after said Company was furnishing gas through two pipe lines, it should collect a temporary rate of 60 cents (impounding 10 cents) until the final fixation of reasonable rates;

(6) That in compliance with the obligation imposed by said Section 23, the Company entered into a contract with Petroleum Exploration, a corporation then owning an adequate source of supply of natural gas in Owsley and Clay Counties in Eastern Kentucky, whereby it was agreed that said Petroleum Exploration would construct such additional line of pipe from the City of Lexington to said source of supply, and whereby it was further agreed that said Petroleum Exploration would furnish and deliver to the Company at Lexington and the Company agreed to purchase a minimum of 750,000,000 cubic feet per annum, and to pay therefor 40 cents per M. c. f.;

(7) That said additional pipe line was completed and gas begun to be delivered through the same in November, 1927, and the agreed temporary rate of 60 cents went into effect on December 1, 1927;

(8) That the making of said contract with said Petroleum Exploration and the completion of said additional pipe line and the delivery of gas through the same, was accepted by the City of Lexington as a performance of the obligation imposed by said Section 23;

[fol. 365] (9) That the cost of said additional supply of gas became a fixed part of the Company's annual operating expenses from and after December 1, 1927. (Error VII.)

Point IV

The Court committed error in failing and refusing to find as a matter of law, that from and after the date the

plaintiff was furnishing gas through the second pipe line (December 1, 1927), as required by Section 23 of the franchise contract, the cost of said additional gas should be included in any estimate of the plaintiff's operating expenses in determining the question of just and reasonable rates for the plaintiff's gas service. (Error XI.)

Point V

The Court committed error in failing and refusing to find that the schedule of rates promulgated by the plaintiff on February 26, 1927, in compliance with Section 4(B) of the franchise contract, were not in excess of just and reasonable rates and that any lower rates would be unjust and unreasonable and confiscatory. (Error VIII.)

Point VI

The Court committed error in failing and refusing to decide as a judicial question submitted to it under the franchise contract agreement, what rates and charges would be just and reasonable under the terms and conditions of the franchise contract. (Errors VI and XIV.)

Point VII

The Court committed error in finding that a 50 cent rate for gas would as for a normal year produce net income sufficient to yield a seven per cent return on the rate base fixed by it. (Error XII.)

[fol. 366]

Point VIII

The Court committed error in finding that a seven per cent return is fair and reasonable for plaintiff, and in refusing to find in accordance with the evidence that plaintiff is entitled to earn a ten per cent return by reason of the nature and extra hazard of the natural gas business. (Error XIII.)

Point IX

The Court committed error in failing and refusing to find that plaintiff has the right under the law and the express terms of the franchise contract to fix its own rates and charges for its gas service, and that plaintiff has the

contract right to charge and collect a minimum rate, or service charge, and to charge lower rates for larger quantities of gas and higher rates for smaller quantities of gas subject only to the limitation that such rates and charges shall not be in excess of what is just and reasonable. (Error IV.)

Point X

The Court committed error in failing and refusing to find the facts of this cause specially and to state separately its conclusions of law thereon, and to enter the same of record. (Errors I and II.)

Point XI

The Court committed error in refusing to grant a permanent injunction against the enforcement of the Commission Rate of 45 cents. (Error XVII.)

Point XII

The Court committed error in ordering that plaintiff pay the costs incurred in this action contrary to the express [fol. 367] agreement contained in Section 35 of the franchise contract that all court costs should be paid equally by the plaintiff and the City of Lexington.

Henry T. Duncan, D. L. Hazelrigg, Chester J. Gerkin, Attorneys for Appellant.

Service accepted this March 18, 1933.

Robt. H. Winn, C. M. Harbison, Attorneys for Appellees.

[fol. 368] Designation of the Portions of the Record and Statement of the Evidence to be Printed

March 11, 1933.

To Charles Elmore Cropley, Clerk of United States Supreme Court, Washington, D. C.:

For the purpose of complying with the Rules of the Supreme Court of the United States, and particularly Rule 13, paragraph 9, you are hereby advised that the parts of the record deemed necessary for the consideration of the appeal herein and which should be printed, are hereinafter designated and you are requested to print only the portions of the record so designated, to-wit:

[fol. 369] The Court Record

Portions to be printed	Transcript pages
1. Bill of Complaint, filed October 19, 1929	1- 38
2. The franchise ordinance filed with the Bill of Complaint and designated as Exhibit "A," omitting therefrom the following sections of said ordinance, Section 3 and Sections 8 to 21 inclusive; the portion of Section 22 beginning with the words: "The Company shall provide" (Transcript p. 44), and ending with the words: "at locations as directed." (Transcript p. 45), Section 24 to Section 29, inclusive, Sections 32 to 34 inclusive. Section 36. The portion of Article II beginning with the words: "Each bidder shall be required," (Transcript p. 48) and ending with the words "in hands of the Mayor." Article V, Article VII.	
3. Motion for Interlocutory Injunction and for Temporary Restraining Order, Filed October 9, 1929	50- 51
4. Temporary Restraining Order, entered October 19, 1929	52- 54
5. Motion by defendants to dismiss the Bill of Complaint, filed November 8, 1929	55- 56
6. Answer, filed November 14, 1929	56- 72
7. Notice to the Governor of Kentucky, filed December 7, 1929	73
8. Amended Bill of Complaint, filed December 7, 1929	73- 76
9. Opinion, filed January 29, 1930	77- 91
10. Order entered March 8, 1930 (Omitting therefrom paragraph 13)	91- 94
11. Order entered March 24, 1930 (Omitting therefrom paragraphs 1 and 3)	97- 98
12. Order entered July 20, 1930	98-103
13. Opinion filed July 11, 1932	106-115
14. Agreed order entered August 5, 1932	123

[fol. 370]

Portions to be printed	Transcript pages
15. Motion to find facts specially and state separately conclusions of law thereon, filed August 13, 1932. (Omitting therefrom under the heading "Findings of Fact" the following portions thereof, to-wit: Paragraphs 1 and all sub-paragraphs; Paragraphs 2, 5 and 6 and all sub-paragraphs; and also omitting under the heading "Conclusions of Law" the following portions thereof, to-wit: Paragraphs 3, 4 and 9	124-134
16. Order entered August 13, 1932	135
17. Letter to Clerk, filed September 22, 1932	135-136
18. Order overruling motion to find specially the facts and state conclusions of law, filed September 22, 1932	136
19. Decree entered September 22, 1932	137-140
20. Order Filing Petition for Rehearing	140
21. Order overruling Petition for Rehearing entered November 22, 1932	142
22. Order entered December 20, 1932, filing petition for appeal	142-143
23. Petition for Appeal, filed December 20, 1932	143-144
24. Assignment of Errors, filed December 20, 1932	144-150
25. Order allowing appeal entered December 20, 1932	151
26. Citation of Appeal, entered December 22, 1932	154
27. Statement of Jurisdiction, filed December 20, 1932	155-158
28. Notice filed December 20, 1932	159-160

Statement of Evidence

The following portions of the "Condensed Statement of Pleadings Before Railroad Commission of Kentucky, and Evidence Essential to Decision of Questions Presented on Appeal" are deemed necessary for the consideration of the [fol. 371] points on which appellant intends to rely, and you will therefore please have printed such portions thereof and such portions of the Exhibits filed therewith as hereinafter designated, to-wit:

Portions to be printed

	Transcript pages
The entire Condensed Statement filed by the appellant, except the following portions thereof which should be omitted	161-233
(1) Beginning with the words "in accordance with," (Transcript p. 161), and ending at the bottom of page 162	161-162
(2) Paragraphs 5 and 6, and the words "being the order complained of herein" at the end of paragraph 7	164
(3) Beginning with the words "Company Exhibit No. 9," and ending with the words, "Consumed per month." (Transcript p. 166)	166
(4) Beginning with the words "Many of the Contracts" (Transcript page 167), ending with the words "basis of these contracts" (Transcript page 168)	167-168
(5) "Counsel: That is under letters "M. c. f." "The Witness: "That is right." (Transcript p. 172)	172
(6) Beginning with the word "Counsel" near top Transcript page 174, and ending with the words "held in trust." (Transcript p. 175)	174-175
(7) Beginning with the words "In addition to the figures" (Transcript p. 175) and ending with the words: "Field and main line expenses." (Transcript p. 176)	175-176
(8) Beginning with the words: "Mr. Duncan" near top of Transcript page 183, and ending with the words "above that figure is 16.6¢," same page	183
(9) "Mr. Duncan: That was in 1926?" The Witness: "Yes." (Transcript p. 183)	183
(10) "Mr. Walker told me when he was alive that they failed to compute the amount of gas withdrawn from the field and used in those compressors." (Transcript p. 184)	184

[fol. 372]

Transcript pages

(11) Beginning with the words: "Mr. Duncan" (Transcript page 184) and ending with the words "it is a very novel situation." (Transcript p. 186) 184-186

(12) Beginning with the words "The next statement" (Transcript p. 187) and ending with the words: "the entire Company," (Transcript p. 190) 187-190

(13) The portion beginning with the words "which is entitled" (Transcript p. 190) and ending with the words: "with the Commission," (Transcript p. 190) 190

(14) "Mr. Duncan: None of that loss is included in the Lexington District?"

"The Witness: That is correct." (Transcript p. 191) 191

(15) The words: "monthly—I will retract that: The number of bills sent out by the Company." (Transcript p. 192) 192

(16) The words: "I believe in that last statement which I read there is a dollar sign in front of it which should be eliminated." (Transcript p. 195) 195

(17) The words: "Also in the total of column 12 there is a dollar sign which should be eliminated, that being thousand cubic feet." (Transcript p. 196) 196

(18) The portion: "I expect the Commission is pretty tired of this. The statements that follow speak for themselves, but if you desire, I would be glad to go into the details." (Transcript p. 196) 196

(19) The question and answer portion beginning with the words: "Q. Mr. Kimball," and ending with the words: "Of this record." (Transcript p. 199) 199

(20) "Mr. Duncan: Identify that as Company Exhibit No. 8." (Transcript p. 200) 200

(21) The entire portion under the heading "Hearing on December 12, 1928," (Transcript p. 206) 206

[fol. 373]

Portions to be printed	Transcript pages
(22) The portion beginning with the words: "We desire as well" (Transcript p. 208) and ending with the words: "sources of supply." (Transcript p. 209)	208-209
(23) The portion beginning with the words: "Judge Winn" (Transcript p. 210) and ending with the words "has no objection." (Transcript p. 212)	210-212
(24) The portion beginning with the words: "By stipulation and agreement," (Transcript p. 224) and ending with the words: "on that basis." (Transcript p. 224)	224
(25) The portion beginning with the words: "Objection by counsel for complainants," and ending with the words: "Exception saved by counsel for complainants." (Transcript p. 231)	231
(26) Also omitting pages 7, 8, 9, 10, 11, 12 and 13 of "Company Exhibit 4."	
(27) Also omitting Company Exhibit No. 9.	
(28) Also omitting Carter Exhibit No. 7.	
(29) Also omitting Carter Exhibit No. 8.	
(30) Also omitting Carter Exhibit No. 10.	
(31) Also omitting the entire portion of the transcript under the heading "Amendments Proposed by the Appellees to the Appellant's Statement of the Evidence for the Appeal," and all Exhibits filed therewith by appellees, beginning on P. 234 of Transcript and ending on page 350 of Transcript	234-350

Please omit all repetitions of title, and note in the printed record the omissions of the various instruments mentioned in the præcipe herein certified to the Clerk of the Supreme Court.

Henry T. Duncan, D. L. Hazelrigg, Chester J. Gerkin, Attorneys for Central Kentucky Natural Gas Company, Appellant.

Service of the foregoing directions to the Clerk of the Supreme Court of the United States designating the portions of the record to be printed, is hereby accepted on behalf of the Appellees, this March 18, 1933.

Robt. H. Winn, O. W. Harbison, Attorneys for Appellees.

[fol. 374] [File endorsement omitted.]

[fol. 375] SUPREME COURT OF THE UNITED STATES

DESIGNATION BY THE APPELLEES OF THE ADDITIONAL PORTIONS OF THE RECORD AND TRANSCRIPT AND STATEMENT OF THE EVIDENCE THAT THEY DESIRE AND DIRECT TO HAVE PRINTED AS UNDER RULE 13, SUBSECTION 9, OF THE SUPREME COURT OF THE UNITED STATES—Filed March 27, 1933

To Charles Elmore Cropley, Clerk of the United States Supreme Court, Washington, D. C.:

For the purpose of complying with the revised rules of the Supreme Court of the United States, and particularly Rule 13, paragraph or subsection 9, you are hereby advised that by this written designation the appellees point out, request, and require the printing of the following portions of the record which the appellees deem material in addition to those portions thereof designated by the appellant for printing herein in conformity to the said rule and the said sub-section, to-wit:

Transcript pages

45 [fol. 376]. First. So much of Section 24 of the franchise contract between the City of Lexington and the Central Kentucky Natural Gas Company, to be found upon page 45 of the transcript as certified from the United States District Court for the Eastern District of Kentucky to this Court by S. W. Stacey, Clerk, as is in these words:

"The Company hereby agrees and binds itself by the acceptance of this franchise to take all reasonable means and measures necessary to furnish

Transcript pages

an adequate supply of natural gas to the City of Lexington and its inhabitants at all times during the term of this franchise."

47 Also Section 34 of said franchise, to be found upon page 47 of the record, which is in these words:

"The Board shall have the power to establish such reasonable ordinances, rules and regulations to carry into effect the provisions of this franchise as it may deem necessary, and to modify, alter and amend such ordinances, rules and regulations from time to time."

94 Second. All of paragraph 13, (to be found upon page 94 of the transcript) of the Court's order of March 8th, 1930, which begins thus:

"Said plaintiff is further ordered and directed to give to each customer a receipt for the amount paid by him pending the final judgment of this Court; and said Company is directed to keep an accurate record of all sums paid in by each and all of its customers under said temporary rate; and said record so kept by said Company shall at all times be open for inspection to the City of Lexington, and to any customer as to such customer's contributions thereto, and to the attorneys, officials and agents for said City of Lexington, or such customer. Said Company is further required, whenever ordered by this Court, either upon the Court's own motion, or the motion of any party to this cause, to file in court a statement, or statements as the Court may require, showing the names of each and all of its customers who have contributed to said fund, and the amount paid in by each customer, such statement, or statements to be made up in orderly bookkeeping form."

124-5 127 Third. So much of the motion to be found upon pages 124-5, and upon page 127 of the transcript as is in these words:

Transcript pages

"Comes the plaintiff, Central Kentucky Natural Gas Company, and in accordance with the provisions of New Equity Rule 70½, now moves the Court to make the following special findings of fact, and to state separately its conclusions of law thereon, as follows:

Findings of Fact

That as of December 31, 1926, and also for the purposes of this case as of February 25, 1927, the date of the franchise contract, and as of October 9, 1929, the date of the rate order of the Railroad Commission of Kentucky, complained against herein, and as of the date of the final decree of this Court, the Court find: * * *

That the total reproduction cost new, less deterioration, and the total fair value of the rate base property of the plaintiff company, was and is as of the dates aforesaid, $3,669,400 and allocable [fol. 377] to the Lexington district $. 028,069.

"That the distribution system in the City of Lexington owned by Lexington Utilities Company and leased to plaintiff, was at all times herein used and useful in rendering the plaintiff's gas service in the Lexington district, and should be included as part of the rate base property for the purposes of this case; and that the reproduction cost new, less deterioration, and the fair value of said property, was and is as of the dates aforesaid, $611,227; that as of the dates aforesaid the total reproduction cost new, less deterioration, and the fair value of the combined properties of the plaintiff and Lexington Utilities Company, was and is $4,280,627, and that the fair value of said property allocable to the Lexington district, was and is $2,639,296."

Fourth. Sheet 14 of the Company's Exhibit 4 (unless appellant's requisition of the part of the record to be printed includes this sheet 14. The appellees are unable to determine whether said designation does include this sheet. If it does,

Transcript pages.

then this designation may be disregarded. If it does not, this designation is to be followed).

207–10 Fifth: Also all of that part of the appellant's "Condensed statement of pleadings before Railroad Commission of Kentucky and evidence essential to decision of questions presented on appeal," as appears upon pages 207-8-9-10, in nature a letter of date April 12th, 1928, addressed by Robert H. Winn and D. C. Hunter, as attorneys for complainants, to Mr. Henry T. Duncan, Lexington, Kentucky, and Mr. D. L. Hazelrigg, Frankfort, Kentucky.

210–12 Sixth. Also from pages 210-11-12 of the transcript and from said last above-named papers, the words beginning "Judge Winn: I would like to ask Mr. Hazelrigg," on page 210 of the transcript, and ending with the words "filed by Mr. Kimball in today's hearing," on page 212.

Seventh. All of sheet 7 of the Company's Exhibit 9, filed by the appellant as a part of the transcript herein.

Eighth. All of sheet 9 of said Company's Exhibit No. 4.

Ninth. All of Carter Exhibit No. 8, filed as a part of the record by the appellant in this court.

Tenth. The right-hand half of Carter Exhibit 10, filed here by the appellant as part of the record on the appeal, beginning with the words: "Rate of return for Lexington District (Central [fol. 378] Kentucky Natural Gas Co. Inc.) (Lexington Utilities Co. Inc.)." and ending with the words "Jirgal's cost of reproduction depreciated to Kimball condition, $1,799,626. 22.8%."

234–85 Eleventh. The entire contents of the paper entitled "Amendments proposed by the appellees to the appellant's statement of the evidence for the appeal," being pages 234 to 285, inclusive, of the transcript on file herein.

Transcript pages

Twelfth. So much of the gas purchase contract between the United Fuel Gas Company and the Central Kentucky Natural Gas Company as is now set out:

288 (a) Beginning with the words "This agreement, made and entered into this 1st day of November, A. D. 1912", and ending with the words "do hereby agree as follows", the said portion appearing on page 288 of the transcript, certified to this court by S. W. Stacey as Clerk of the United States District Court for the Eastern District of Kentucky.

289 (b) The entire third paragraph of said contract, which begins on page 289 of said transcript, and ends with the first two lines on page 290 thereof.

293–4 (c) The entire eighth paragraph of said contract, which begins on page 293, and ends on page 294, of said transcript.

297 (d) From the transcript the following words appearing on page 297 thereof:

"Unless previously terminated pursuant to the provisions herein contained, or by mutual consent of the parties hereto, this contract shall continue for the term of twenty years from this date, and so long thereafter as the United Company produces gas in marketable quantities from its gas properties in West Virginia and Kentucky."

300 (e) The attestation clause and the signatures thereto of the said contract appearing upon page 300 of the transcript.

309 [fol. 379] Thirteenth. A certain letter addressed by the Central Kentucky Natural Gas Company to the Kentucky Cities Gas Company, c/o B. C. Tynes, President, of date July 9th, 1927, to be found upon page 309 of the transcript.

323 Fourteenth. So much of the contract between the Bed Rock Oil Company and the Central Kentucky Natural Gas Company as is to be found on page 323 of said transcript as is in these words:

Transcript pages

(a) "This contract made and entered into this 20th day of November, A. D. 1918, by and between Bed Rock Oil Company, a Kentucky corporation, party of the first part, and the Central Kentucky Natural Gas Company, a corporation organized under the laws of the State of Kentucky, party of the second part, witnesseth."

324 (b) Also so much of said contract as appears on page 324 of said transcript, which part is in words and figures as follows, to wit:

"The party of the second part agrees . . . to take and pay for all the natural gas in and underlying said lands, not exceeding five million cubic feet per day, during the six winter months, at the rate of eight (8) cents per thousand cubic feet . . . and second party agrees to take and pay for during the six summer months at said rate of eight (8) cents per thousand cubic feet."

326 (c) Also the entire fifth paragraph of said contract appearing upon page 326 of the transcript herein, beginning with the words "when the supply of natural gas available", and ending with the words "cancel this contract".

329 (d) Also the attestation clause and the signatures to said contract appearing upon page 329 of the transcript.

321 (e) Also that letter appearing on page 321 of said transcript, of date June 29th, 1922, addressed by W. C. Walker, Vice-President of the Central Kentucky Natural Gas Company to G. C. Davison, Pres. Bed Rock Petroleum Company.

335 [fol. 380] Fifteenth. So much of the agreement between the Hillsdale Gas Company and the Central Kentucky Natural Gas Company as appears upon page 335 of said transcript and as is in these words:

(a) "This agreement made and entered into the 24th day of January, A. D. 1924, by and between the Hillsdale Gas Company, a corporation under

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the laws of the State of Delaware, of Covington, Kentucky, party of the first part, and Central Kentucky Natural Gas Company, Incorporated, a Kentucky corporation, party of the second part, witnesseth."

338 (b) Also so much of said contract as appears upon page 338 of said transcript as is in these words:

"The party of the first part undertakes and agrees that it will sell to the party of the second part, so soon as said connecting line is completed, and the party of the second part undertakes and agrees to purchase and take from the party of the first part, during each year of the existence of this contract, and beginning with the date of the completion of said connecting line and compressor plant, natural gas of not less than seven hundred and twenty million (720,000,000) cubic feet."

340 (c) Also so much of said contract as appears upon page 340 of said transcript as is in these words:

"The party of the second part undertakes and agrees that from the time of the commencement of deliveries, it will pay to the party of the first part for the natural gas sold and delivered to it by the party of the first part the rate or price of twenty (20) cents per thousand cubic feet, and that said rate shall be increased by an amount equivalent to thirty-three and one-third (33⅓) per cent. of any increase in the net domestic rate which the party of the second part may hereafter obtain in the City of Lexington, Kentucky."

342 (d) Also so much of said contract as appears upon page 342 of said transcript and as is in these words:

"In case the supply available for delivery hereunder to the party of the second part so diminishes that the party of the first part is unable to deliver [fol. 381] five hundred thousand (500,000) cubic

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feet, on an average per day, during the winter period, namely, from November to April, inclusive, either party shall have the right, upon six months' written notice, to cancel this contract."

344 (e) Also so much of said contract as appears upon page 344 of said transcript and as is in these words:

"Unless previously terminated pursuant to the provisions herein contained, or by mutual consent of the parties hereto, this contract shall continue for the term of ten (10) years from the date of the completion of said connecting line, measuring station, and compressor plant."

344 (f) Also the attestation clause and the signatures to said contract appearing upon page 344 of the said transcript.

346 Sixteenth. So much of the agreement between Lewis Vincent and the Central Kentucky Natural Gas Company as appears upon page 346 of said transcript and as is in these words:

(a) "This agreement made and entered into this 20th day of April, A. D. 1925, by and between Lewis Vincent, of Pittsburgh, Pennsylvania, party of the first part, and Central Kentucky Natural Gas Company, Incorporated, a Kentucky corporation, party of the second part, witnesseth."

349 (b) Also so much of said contract between Lewis Vincent and the Central Kentucky Natural Gas Company as appears on page 349 of the transcript and as is in these words:

"The party of the second part agrees to purchase gas from the party of the first part under the terms and conditions hereinbefore specified until such time as in the judgment of the party of the second part it is no longer profitable to maintain and operate its said six and five-eighths (6⅝) inch pipe line. This contract shall terminate when second party shall cease to operate its said six and five-eighths (6⅝) inch pipe line, after which

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no further liabilities shall accrue, and either party may reclaim its property used for the purpose of this contract."

350 [fol. 382] (c) Also the attestation clause and the signatures to said Lewis Vincent contract appearing on page 350 of the transcript.

Robt. H. Winn, C. W. Harbison, Attorneys for the Appellees.

Service of the foregoing directions to the Clerk of the Supreme Court of the United States, designating the portions of the record directed by the appellees to be printed, is hereby accepted on behalf of the appellant this March 22nd, 1933.

Henry T. Duncan, Chester J. Gerkin, D. L. Hazelrigg, Attorneys for Appellant.

[fol. 383] [File endorsement omitted.]

[fol. 384] SUPREME COURT OF THE UNITED STATES

STIPULATION DESIGNATING ADDITIONAL PORTIONS OF RECORD TO BE PRINTED—Filed March 27, 1933

To Charles Elmore Cropley, Clerk of the United States Supreme Court, Washington, D. C.:

The parties appellant and appellees, at the request of appellant, now stipulate that the following additional portions of the record shall be printed, being additional portions of the Franchise Contract, to-wit, all of Section 22, Section 27, and Section 30.

This March 24, 1933.

Henry T. Duncan, D. L. Hazelrigg, Chester J. Gerkin, Attorneys for Appellant. Robt. H. Winn, C. M. Harbison, Attorneys for Appellees.

[fol. 385] [File endorsement omitted.]

[fol. 386] SUPREME COURT OF THE UNITED STATES

STIPULATION DESIGNATING ADDITIONAL PORTIONS OF RECORD TO BE PRINTED—Filed March 31, 1933

To Charles Elmore Cropley, Clerk of the United States Supreme Court, Washington, D. C.:

The parties appellant and appellee, at the request of the appellees, now stipulate that the following additional portion of the record shall be printed, to-wit: the order entered in this cause by the trial court on July 29th, 1932, overruling appellant's Petition for Modification and Amendment of the Opinion.

This March 30th, 1933.

D. L. Hazelrigg, Chester J. Gerkin, Henry T. Duncan, Attorneys for Appellant. Robt. H. Winn, C. M. Harbison, Attorneys for Appellees.

[fol. 387] [File endorsement omitted.]

Endorsed on cover: File No. 37,476. E. Kentucky D. C. U. S. Term No. 779. Central Kentucky Natural Gas Company, appellant, vs. Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest, and James Hatcher, members constituting said Railroad Commission, et al. Filed March 15, 1933. File No. 37,476.

IN SUPREME COURT OF THE UNITED STATES

No. 779, October, 1932, Term

CENTRAL KENTUCKY NATURAL GAS COMPANY, Appellant,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Appellees

STIPULATION

The parties appellant and appellee, at the request of the appellees, now stipulate that there shall be printed as a portion of the record on appeal herein that certain contract between the Central Kentucky Natural Gas Company and the Lexington Gas Company, as Exhibit No. 21 in the proof on file in the District Court of the United States, for the Eastern District of Kentucky, in this cause, being that same paper referred to as item No. 6 of the papers composing the record herein, as set forth on page 194 of the printed record in this cause as on file in the office of the clerk of the above-styled court.

This April 29th, 1933.

Henry T. Duncan, Attorney for Appellant. Robt. H. Winn, Attorney for Appellees.

This contract, made and entered into this the 15th day of December, 1905, by and between Central Kentucky Natural Gas Company, a corporation organized under the laws of the Commonwealth of Kentucky, party of the first part, to be known hereinafter as the "Natural Gas Company", and the Lexington Gas Company, a corporation organized under the laws of the Commonwealth of Kentucky, party of the second part, to be known hereinafter as the "Lexington Company",

Witnesseth:

That whereas the Natural Gas Company is the owner of a natural gas franchise in the City of Lexington, Kentucky, whereby said Natural Gas Company has the right and privileges to construct and maintain a plant and system of pipes for the purpose of selling natural gas to the consumers of Lexington and vicinity; that said Natural Gas Company has already constructed about seven (7) miles of pipe lines

within the City of Lexington, with a view of exercising said franchise and has already purchased large quantities of pipe and other materials for the purpose of completing said natural gas plant in Lexington and vicinity, and,

Whereas, the Lexington Company is the owner of a franchise in the City of Lexington, Kentucky, for the purpose of furnishing the consumers of said city with gas, and the said Lexington Company is now exercising said franchise and is engaged in making and furnishing gas in said city; now, therefore, for and in consideration of the sum of one ($1.00) dollar, cash in hand paid to the Natural Gas Company, and for and in consideration of the faithful performance of the terms and conditions hereinafter set out, the said Natural Gas Company hereby sells, assigns, and transfers to the Lexington Company its natural gas franchise and all rights and privileges thereunder within the purview of this contract and all its pipe lines already constructed and all of its pipes and other material already purchased for said plant and under contract of purchase, upon the following terms and conditions, to-wit:

(1) That the Lexington Company will pay to the Natural Gas Company the cost price of said natural gas franchise and the cost price of all the pipe lines already laid in said city, together with all the cost of construction, freight and other necessary expenses connected with the purchase and construction and transportation of said pipe lines and other materials and the cost price of all said pipes and material already purchased and under contract of purchase, it being understood that such material purchased and under contract of purchase does not exceed the necessary uses of the Company.

It is further agreed that the Natural Gas Company shall make out a statement of the money expended up to January 1st, 1906, for the aforesaid franchise, material, freight and construction work, and shall present said statement to the Lexington Company on or before January 10, 1906, and thereupon said Lexington Company shall, within ten days thereafter, pay to the said Natural Gas Company, the money expended as aforesaid.

(2) The Natural Gas Company will proceed with the construction of said natural gas plant in Lexington and vicinity with due diligence so as to have an adequate sys-

tem of lines that will furnish natural gas to the citizens of Lexington and vicinity; the Lexington Company to pay the Natural Gas Company the actual cost and expenses so incurred in the construction of said system, such cost and expenses not to include salaries of officials of the Natural Gas Corporation, and on the first day of each month, after work is done and material furnished, the Natural Gas Company shall render to the Lexington Company an account for statement of the cost of construction and material furnished and thereupon the said Lexington Company shall pay said Natural Gas Company the sum expended as aforesaid within ten (10) days after such account is presented.

An "adequate system" of lines in this clause shall mean piping all the principal streets, as indicated in plan hereto attached, as rapidly as shall be found necessary for the performance of any contracts made by the Natural Gas Company.

(3) The Lexington Company shall have the right to decide on the size of the lines to be laid, provided, however, the said pipe lines shall be large enough to give adequate service to the consumers, and shall have general supervision of the construction of such lines and the depth the lines are to be buried.

(4) Whenever the low pressure system of lines becomes inadequate to give reasonable service to consumers, arising from growth of city in any particular locality, and it is necessary to supplement the supply, then high pressure mains shall be extended to such a point as may be necessary to remedy the defect.

(5) Wherever the Lexington Company's cast iron line-extend and this construction can be used, the Natural Gas Company shall attach these lines to the wrought iron system. And it shall be the duty of the superintendent of the Natural Gas Company to give Lexington Company a reasonable notice of the probable time that the Natural Gas Company will be ready to connect its wrought iron system to the cast iron system, and thereupon when Natural Gas Company is ready, such connection shall be made and natural gas thereafter can be used.

(6) The Lexington Company shall lease and does hereby lease to the Natural Gas Company, its gas franchise, for

the purpose of this contract, both artificial and natural, and does hereby lease to said Natural Gas Company its entire system of pipes upon the following terms and conditions:

A. That the Natural Gas Company will, monthly, pay to the Lexington Company, twelve and one-half per cent (12.5%) of the earnings of the Natural Gas Company, subject to deduction for expenses hereinafter provided.

B. The Natural Gas Company shall continuously exercise such franchise and shall supply consumers in Lexington and vicinity with natural gas as is provided in said natural gas franchise.

C. The Lexington Company shall continue to operate its plant, be responsible for all expenses relating thereto, and be the recipient of all receipts arising from gas furnished by it until the Natural Gas Company shall be prepared to turn its gas into the pipes of the Lexington Company, whereupon the control of the distribution of gas to the consumers in Lexington shall pass, under the provisions of this contract, to the Natural Gas Company.

D. This lease shall remain in full force and effect as long as the Central Kentucky Natural Gas Company has a full supply of gas, provided, however, that this lease shall not be forfeited for want of supply because of any accident to lines or wells, and only when there has been a shortage for one hundred and twenty (120) consecutive days; provided, also, that when the Central Kentucky Natural Gas Company fails to supply natural gas on account of shortage for one hundred and twenty (120) consecutive days, said lease shall thereupon cease and determine all rights thereunder of the Natural Gas Company to franchise and property of the Lexington Company end.

The Lexington Company shall, however, purchase such gas as the Natural Gas Company has to sell at seventy-five per cent (75%) of the selling price of such gas to the public at such time, provided same can be marketed, but in no event shall the cost price of such gas to the Lexington Company exceed thirty (30) cents for one thousand (1,000) cubic feet; the gas so purchased by the Lexington Company to be measured at the different delivery points in the city with a satisfactory measuring device to

be agreed upon by the contracting parties, and the gas is to be measured and computed at the standard pressure of six (6) ounces to the square inch into the system of the Lexington Company; the Lexington Company to continue to take gas as long as the Natural Gas Company can deliver five hundred thousand (500,000) cubic feet daily.

E. The Lexington Company is to pay for change in taps and service pipes to such size as will give good service to all persons who are connected at present to the mains of the Lexington Company's plant.

F. After the city and vicinity have been fully piped, extensions are not to be made beyond three hundred (300) feet of street main for each house, and not to exceed one hundred twenty five (125) extensions each year, without the consent of the Lexington Company, except in cases of groups of houses, or new additions to the City where there is more than one house, when such groups of houses or additions may be reached by an average of three hundred (300) feet of the street main to each house.

It is understood that such extensions shall not necessitate overcoming any unusual conditions.

G. After the Natural Gas plant has been installed all extensions, and from main to curb—including curb box and cock is to be done at cost by the Natural Gas Company, the same as in the principal construction, and a bill rendered to the Lexington Company each month to be paid within ten (10) days after the presentation of said bill.

H. The Natural Gas Company shall have entire control of fixing the price per thousand cubic feet at which gas shall be sold, and shall have entire control of the delivery and sale of the natural gas in said city.

I. The Natural Gas Company shall be allowed each year for running expenses as follows:

For the year 1906	$5,000.00
For the year 1907	7,500.00
For the year 1908	10,000.00

and $10,000.00 for each year thereafter, and running expenses shall be held to include office, rents, salaries, the reading of meters, collection of bills, the Company's

management, the care, supervision and maintenance of the plant, and all expenses connected therewith.

J. During the construction of the plant and until the gas is turned on, all of the office expenses and the Superintendent's salary shall be included in the construction cost, and after the gas is turned on and until an adequate system shall have been completed a fair proportion of the Superintendent's salary shall be included in the construction charges, and such charges shall be included in the monthly statements rendered.

K. The Natural Gas Company shall make payment to the Lexington Company of the twelve and one-half per cent (12.5%) provided for under the terms of this contract on the 15th day of each month out of the earnings of the Natural Gas Company for the preceding month.

L. The present cast iron system shall as soon as possible be put in first class condition, clamping where necessary under the direction of E. Strong and S. T. Murdock.

Casualty insurance shall be taken out on the whole Lexington plant for protecting the Natural Gas Company and the Lexington Company against loss from injuries to persons, the cost of the premium to be paid by said parties as follows: the Natural Gas Company to pay such an amount as will bear the same relation to the whole premium as the screw joint lines bear in feet to the cast iron mains, the balance of the premiums to be paid by the Lexington Company; these payments in said proportions to be made during the life of this lease, and thereupon the Lexington Company shall be released of all liability to claims for damages to persons or property during the term of this contract so far as any of the claims may arise from the use or operation of the Lexington plant, and said Natural Gas Company agrees to indemnify said Lexington Company in the event of any recoveries against the Lexington Company arising from claims for damages to persons or property in the operation and use of said plant.

The taxes upon all assessments of taxation of the gas plant operated under this agreement are to be paid as follows:

The Lexington Company is to pay all taxes upon the tangible property of the plant. The taxes upon the in-

tangible property, or in other words the "franchise taxes" are to be paid by the two companies in the ratio of the net earnings received by each company as provided in this agreement.

The Lexington Company shall have the right at all proper times to examine such books and accounts of the Natural Gas Company as may be necessary to verify the statements of the receipts and earnings under this contract.

M. Any question of dispute arising between the Lexington Company and the Natural Gas Company shall be determined by S. T. Murdock for the Lexington Company and E. Strong or John Tonkin for the Natural Gas Company, and, in the event of a disagreement between them, they shall select a third party and the decision of a majority shall be final upon the question in dispute.

It is understood that either Company, in the event of the death or inability to attend to any subject of dispute, of either of the persons named, may name a substitute in place of the aforesaid designated persons.

In witness whereof the Central Kentucky Natural Gas Company and the Lexington Gas Company have hereunto caused their corporate seals to be affixed and the same to be attested by their Presidents and Secretaries on the day and year first above written.

Central Kentucky Natural Gas Company, by (Signed) Joseph Seep, President. Attest: (Signed) Robert Hampton, Secretary. Lexington Gas Company, by (Signed) Louis Des Cognets, President. Attest: (Signed) Henry Rainey, Asst. Secretary.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY

I, S. W. Stacey, clerk of the above-styled court, hereby certify that the foregoing eight pages constitute and are a complete and full copy of Exhibit No. 21, a contract between the Central Kentucky Natural Gas Company and the Lexington Gas Company, in that suit heretofore and now upon the docket of this court, styled Central Kentucky Natural Gas Company vs. Railroad Commission of Ken-

tucky, et al., and that the same is that paper referred to in item No. 6 on page 235 of the record sent up from this office to the office of the clerk of the Supreme Court of the United States on the appeal herein; and that the said paper was among those approved by the trial court as a part of the transcript for the said appeal.

Witness my hand and seal this 26th day of April, 1933.

S. W. Stacey, Clerk, by —— ——, Deputy Clerk.

(Seal U. S. District Court, East. Dist. of Ky., U. S. of America.)

(3319)

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY (AT LEXINGTON)

Before Moorman, Hickenlooper, and Dawson, Constituting a Statutory Court

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Defendants

ORDER—Filed May 17, 1933

Came the plaintiff in this cause and filed certified copy of the order of the Supreme Court of the United States entered on May 9, 1933, reading as follows:

"It appearing from the record on appeal to this Court that the applicants are not parties to the appeal, their application for leave to appear specially for purposes of moving to dismiss the appeal, and for leave to present such motion is denied. On examination of the papers submitted by the applicants, and in view of the provision of the decree under review with respect to the distribution of the impounded funds, the Court is of the opinion that the applicants should be made parties to the appeal, and in order that proceedings for that purpose may be taken, the hearing of the cause is postponed and the cause is assigned for oral argument on October 9, 1933,"

and moved the court: (1) That an alias citation be issued by this court against Mrs. George Hignight, Mrs. Wellington Payne, Mrs. Anna Mae Hollinger, Mrs. Gladys Berkley, J. W. Kelp, Stanley Dearborn, William Dearborn, P. P. O'Neill, Mrs. Margaret Taylor, R. T. Childers, Nancy Bell Henderson and H. E. Stevens, individually and as representing any and all other gas consumers of the City of Lexington associated with them, including all gas consumers who may be associated with them under the name of Gas Consumers League of Lexington, Kentucky, or otherwise; and (2) that plaintiff be permitted to execute an additional bond, if this court shall so require, running to said parties

and other gas consumers associated with or represented by them;

And the court being advised, and all parties being heard, sustains the motion for an alias citation and directs that such citation be issued and has this day signed and issued the same.

The court being of opinion that no additional bond is necessary, the same is not required.

May 17, 1933.

Chas. H. Moorman, Smith Hickenlooper, Circuit Judges. Chas. I. Dawson, U. S. Dist. Judge.

District Court of the United States for the Eastern District of Kentucky (At Lexington)

In Equity. No. 578

Central Kentucky Natural Gas Company, Plaintiff,

v.

Railroad Commission of Kentucky, Moses R. Glenn, Oscar Vest, and James Hatcher, Members Constituting said Railroad Commission; Bailey P. Wooten, Attorney General of the Commonwealth of Kentucky; City of Lexington, a Municipal Corporation, and S. B. Featherston, Individually and as Representing All Other Persons Similarly Situated, Defendants

Alias Citation of Appeal—Filed May 17, 1933.
S. W. Stacey, U. S. Clerk

United States of America, ss:

To Mrs. George Hignight, Mrs. Wellington Payne, Mrs. Anna Mae Hollinger, Mrs. Gladys Berkley, J. W. Kelph, Stanley Dearborn, William Dearborn, P. P. O'Neill, Mrs. Margaret Taylor, R. T. Childers, Nancy Bell Henderson, and H. E. Stevens, individually and as representing any and all other gas consumers of the city of Lexington associated with them, including all gas consumers who may be associated with them under the name of Gas Consumers League of Lexington, Kentucky, or otherwise:

You are hereby citated and admonished to be and appear in the Supreme Court of the United States, within forty

days from the date hereof, pursuant to an order allowing an appeal from the District Court of the United States for the Eastern District of Kentucky, from a final decree signed, filed and entered on the 22nd day of September, 1932, in that certain suit, being In Equity No. 578, wherein the Central Kentucky Natural Gas Company is plaintiff and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorables Charles I. Dawson, Judge of the United States District Court for the Western District of Kentucky, and Smith Hickenlooper and Charles H. Moorman, Judges of the United States Circuit Court of Appeals for the Sixth Circuit, acting as the Statutory Three-Judge Court in the above entitled cause, this 17th day of May, 1933.

Chas. H. Moorman, Judge of the United States Circuit Court of Appeals for the Sixth District. Smith Hickenlooper, Judge of the United States Circuit Court of Appeals for the Sixth District. Chas. I. Dawson, District Judge for the Western District of Kentucky.

Service waived.

J. A. Edge, Atty. Interveners.

UNITED STATES OF AMERICA,
Eastern District of Kentucky, ss:

I, S. W. Stacey, Clerk of the United States District Court in and for the Eastern District of Kentucky, do hereby certify that the annexed and foregoing is a true and full copy of the original order of the Court made and entered on May 17, 1933, and the original Alias Citation Of Appeal issued May 17, 1933, in the case of Central Kentucky Natural Gas Company vs. Railroad Commission of Kentucky et al., No. 578, now remaining among the records of the said Court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the aforesaid Court, at Lexington, this 23rd day of May, A. D. 1933.

S. W. Stacey, Clerk, by Spencer L. Finnell, Deputy Clerk. (Seal U. S. District Court, East. Dist. of Ky., U. S. of America.)

[Endorsed:] United States District Court, E. District of Ky. Certified copy.

Received Jul. 14, 1933. Office of the Clerk Supreme Court U. S.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

In Equity. No. 578

CENTRAL KENTUCKY NATURAL GAS COMPANY, Plaintiff,

vs.

RAILROAD COMMISSION OF KENTUCKY et al., Defendants

NOTICE—Filed Oct. 13, 1933

To Mrs. George Hignight, Mrs. Wellington Payne, Mrs. Anna Mae Hollinger, Mrs. Gladys Berkley, J. W. Kelph, Stanley Dearborn, William Dearborn, P. P. O'Neill, Mrs. Margaret Taylor, R. T. Childers, Nancy Bell Henderson and H. E. Stevens, individually and as representing any and all other gas consumers of the City of Lexington associated with them, including all gas consumers who may be associated with them under the name of Gas Consumers League of Lexington, Kentucky, or otherwise, and J. A. Edge, Attorney for said parties:

1. That on December 20, 1932, the plaintiff, Central Kentucky Natural Gas Company, filed with the Judges of the Statutory Court sitting in the above styled action its Petition for Appeal, and Assignment of Errors; that on the same day the Judges of said court entered an order allowing said appeal; that on the same day a supersedeas bond was duly executed and approved by said Judges.

2. That on December 20, 1932, the said Central Kentucky Natural Gas Company, appellant, filed in the office of the Clerk of said Statutory Court its Statement of Jurisdiction.

3. Pursuant to Rule 12, paragraph 2, Rules of the Supreme Court of the United States you are hereby served with copies of the aforesaid Petition for Appeal, Order Allowing Appeal, Order Approving Supersedeas Bond, Assignments of Error, and Statement as to Jurisdiction in the above entitled cause. Your attention is directed to the provisions of Rule 12, paragraph 3, of the aforesaid Rules

of the Supreme Court of the United States, which said paragraph reads as follows:

"3. Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

4. That on the 16th day of January, 1933, the above named plaintiff filed in the office of the clerk of the court in the above styled action, its præcipe for a transcript of the record to be filed in the Supreme Court of the United States pursuant to the appeal allowed in the above entitled cause entered by said court on December 20, 1932. A copy of said præcipe is filed herewith attached hereto marked "Exhibit A".

5. That on the 16th day of January, 1933, the said plaintiff lodged with the Clerk of said court a "Condensed Statement of the Pleadings before the Railroad Commission of Kentucky and Evidence Essential to Decision of Questions Presented on Appeal," a copy of which is attached hereto marked "Exhibit B".

6. That on the 31st day of January, 1933, there was lodged with the clerk of said court for and on behalf of the City of Lexington and certain other defendants, appellees, their Amendments to the Plaintiff's Statement of Evidence, a copy of which is attached hereto marked "Exhibit C"; that as modified by the Judges of said court the said Statement of Evidence lodged on behalf of the plaintiff, Central Kentucky Natural Gas Company, as aforesaid, and the said Amendments thereto lodged by the defendants aforesaid was duly approved by the Judges of said court and certified by them to be true, complete and properly prepared, and the same were thereafter filed with the clerk of said court on March 9, 1933.

7. That the clerk of said court thereafter made and certified a transcript of the record in said cause as required

by said præcipe and including the aforesaid Statement of Evidence and Amendments thereto, as approved by the Judges of said court, and said transcript was duly filed with the clerk of the Supreme Court of the United States on the 15th day of March, 1933.

8. That on March 18, 1933, the appellant, Central Kentucky Natural Gas Company, filed with the clerk of said United States Supreme Court its "Statement of Points to be Relied upon and Designation of Parts of Record to be Printed", the same being fully set forth in the printed copy of the "Transcript of the Record" prepared by the clerk of the United States Supreme Court, a copy of which is hereto attached marked "Exhibit D".

9. That on March 27, 1933, the attorneys for the City of Lexington and others, appellees, filed with the Clerk of the Supreme Court of the United States their designation of additional portions of the record and statement of the evidence which they desired to have printed. The same appears in said printed record above referred to, a copy of which is attached hereto marked "Exhibit D".

10. That on March 27, 1933, three was also filed with the clerk of the Supreme Court of the United States a Stipulation designating additional portions of said record to be printed as appears in the aforesaid printed record marked "Exhibit D".

11. That on March 31, 1933, there was also filed with the clerk of the Supreme Court of the United States a further Stipulation designating additional portions of said record to be printed as appears in the aforesaid printed record designated as "Exhibit D".

12. Your attention is called to the aforesaid printed copy of the "Transcript of Record" attached hereto marked "Exhibit D" which sets forth fully and completely the record and Statement of Evidence and amendments thereto which were certified by the clerk of said Statutory Court sitting herein and caused to be printed by the Central Kentucky Natural Gas Company, appellant, and by the City of Lexington and others, appellees, and upon which this cause is sought to be heard and submitted before the United States Supreme Court.

13. You are further notified that on April 20, 1933, the appellant, Central Kentucky Natural Gas Company, filed its printed brief with the Clerk of the United States Supreme Court; and you are further notified that on May 6, 1933, the said appellant, Central Kentucky Natural Gas Company, filed with the clerk of said court its Reply Brief. Copies of said two briefs are attached hereto marked respectively "Exhibit E" and "Exhibit F".

14. You are further notified that the appellant is ready and willing to cooperate with you in having filed with the clerk of the Supreme Court of the United States at the earliest practicable date and to have the same printed, pursuant to stipulation or other appropriate method, such additional portion or portions of the record and evidence as you may consider essential to the appeal (subject however, to the right of appellant to object to any portion or portions of the record or evidence designated by you as not being in fact essential to the appeal)—to the end that there may be no delay in the proper certification and printing of such additional portions of the record and evidence, and in order that there may be no delay in the hearing and submission of this cause in the United States Supreme Court.

Henry T. Duncan, D. L. Hazelrigg, Chester J. Gerkin, Attorneys for Central Kentucky Natural Gas Company, Appellant.

Dated Lexington, Kentucky, July 11, 1933.

Service is hereby accepted of the foregoing Notice, together with copies of the papers and exhibits therein referred to. This 11 day of July, 1933.

J. A. Edge, Attorneys for Mrs. Hignight and others.

UNITED STATES OF AMERICA,
Eastern District of Kentucky, ss:

I, S. W. Stacey, Clerk of the United States District Court in and for the Eastern District of Kentucky, do hereby certify that the annexed and foregoing is a true and full copy of the original notice "Received Office of the Clerk Supreme Court U. S. Jul. 14, 1933" and filed in this office on October 13, 1933, in the case of Central Kentucky Natural Gas Co. v. Railroad Commission of Kentucky

et al., No. 578, now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Lexington this 13th day of October, A. D. 1933.

S. W. Stacey, Clerk, by Spencer L. Finnell, Deputy-Clerk. (Seal U. S. District Court, East. Dist. of Ky., U. S. of America).